Supreme Court, U.S.
FILED

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No.

In the Supreme Court

of the

United States

OCTOBER TERM, 1998

EMILLE V. DECUIR
Petitioner,

vs.

COUNTY OF LOS ANGELES, et al.,
Respondents.

On Petition for Writ of Certiorari to the Court of Appeal of California Second Appellant District, Division Four

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Fourteenth Amendment equal protection clause is violated where state court precludes damage award for public employment discrimination against a United States War-Veteran solely because discriminatory violation is not cognizable under Title VII.

2. Whether Fourteenth Amendment equal protection clause is violated where state court precludes damage award for public employment discrimination solely because discriminatory violation is not cognizable under Title VII.

3. Whether in suit at common law, State Court of Appeal's reversal of jury's verdict, not according to rules of common law, constitutes violation of the Seventh Amendment to the United States Constitution.

LIST OF PARTIES

The parties before the court not listed in the caption include the following additional respondents:

Ronald Maus
David Walters
Frederick Leonhardt

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PETITION FOR WRIT OF CERTIORARI

Petitioner Emille V. DeCuir respectfully petitions this Court to issue a writ of certiorari to review the judgement of the California Court of Appeals for the Second Appellant District.

OPINION BELOW

The opinion of the court of appeals is officially reported at 64 Cal.App.4th 75, and is reprinted in the appendix included herein following the petition (App.) at page 1a. The California Court of Appeal for the Second Appellant District issued an order denying appellants below a petition for writ of prohibition and/or mandamus, which is not officially reported. It is reproduced at App. 1b. The Superior Court of California for the County of Los Angeles issued two separate rulings in the case. They are reproduced at App. pp. 12b and 14b.

JURISDICTION

The judgment of the Court of Appeal of California, Second Appellate District, was entered on May 21, 1998. The Court of Appeal denied a timely petition for rehearing on June 18, 1998. Thereafter, on August 12, 1998, the Supreme Court of California denied a petition for review. (App 14a, 15a) This petition for certiorari was filed within 90 days of that date. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISION AND STATUTE, INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Seventh Amendment to the United States Constitution provides:

> In suits at common law, where the value in controversy shall exceeds twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

California Government Code Section 815.6 Provides:

> Where A public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

Los Angeles County Civil Service Regulation [Rule 7] provides in pertinent part:

> **Passing Grades. A.** Unless otherwise provided in the bulletin or other notice announcing the examination, a final score of at least 70 percent, excluding veteran's credit, shall be required for passing.
>
> **B.** Where an examination consists of two or more parts, the director of personnel may set a minimum score or

rank to be required in any part or combination of parts of such examination, and any applicant who does not attain such minimum score or rank shall not receive a score in the balance of the examination. The minimum score or rank required and the part or parts of the examination to which it is applicable shall be announced at the time of the examination.

STATEMENT OF THE CASE

Petitioner, Emille V. DeCuir, a United States War Veteran, brought this action in March 1992 against respondents, County of Los Angeles and three employees, for erasing his veteran's points during an open competitive civil service examination for Investigator with the Los Angeles County District Attorney's Office. In his complaint, petitioner alleged that respondents purposely erased the educational component of his score to undermine his war veteran's entitlement in order to circumvent his being hired. A jury trial was held. During trial, petitioner alleged, *inter alia,* that in addition to erasing his score, respondents unlawfully increased the score of favored candidates who had failed the written examination. The jury returned a unanimous verdict in favor of petitioner awarding damages in the amount of $380,000 for loss future wages. Defendants appealed and the State Appellate Court reversed, directing the trial court to enter judgment for defendants. (APP. A-1)

Petitioner's factual allegations — that his educational scores had been erased and applicants competing against him had failed the written examination — were never disputed, nor are they now in dispute. The sole issue decided on appeal was availability of remedy. The court concluded that a civil suit was not available to plaintiff.

The Administrative Proceeding In This Case

In 1989 plaintiff Emille DeCuir participated in an open competitive examination for the job of investigator with the Los Angeles County District Attorney's Office. After passing the qualifying written exam, he received a final oral-interview exam score of 90. That score placed him in group-two among candidates on a six-month eligibility list that expired without his being selected for hire.[1] At the expiration of the eligibility period another exam was given and petitioner re-applied, but the agency lost his application and he was not allowed to participate in that examination. In 1990 he re-applied and participated in the examination. He received a final score of 87. That score placed him among group-three of candidates on a six-month eligibility list.

Later, upon review of his exam scores, petitioner discovered that his score for education — on three identical but separate score sheets — had been erased, re-marked and scored lower than the original score required by his educational background. Petitioner protested the reduced score to the chief administrative office (formerly the office of director of personnel) which upheld the reduced score. Petitioner appealed to the civil service commission requesting a hearing on the merits of his claim that respondents erased his educational qualification in order to lower his final score after they discovered he was entitled to points as a U.S. war-veteran. The commission did not grant petitioner a hearing, but instead ordered that he be granted a reinterview. Petitioner appeared for the reinterview, and the agency demanded that he first resubmit to another handwriting exemplar before proceeding to a reinterview. Petitioner stated his objection: that by submitting a second writing

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[1]The examination consisted of two parts: multiple choice written test, and an oral interview test. Only those applicants *passing the qualifying 70% written test* could be allowed to proceed to the oral interview. The interview score was weighted at 100% toward hire.

exemplar, he may be waiving the integrity of his first writing exemplar, which he had not been permitted to review. He requested that he be permitted to go forward with the interview as ordered. Respondents would not allow petitioner to reinterview without the exemplar. Petitioner re-appealed to the commission for a determination of his rights regarding another writing exemplar, and on his original request for a hearing on the merits of his veteran's claim.

After his re-appeal to the commission, respondents sent petitioner a letter stating they no longer required another writing exemplar, and another reinterview was rescheduled. Petitioner did not respond to the rescheduled reinterview, but appeared at the commission as previously scheduled. He requested a hearing to investigate the new developments over respondents' demand for another writing exemplar, and on the matters raised in his original request for a hearing. Without taking evidence, or making any findings, the commission denied petitioner's request for a hearing. Petitioner filed a claim for damages with the County of Los Angeles, alleging "discriminatory hiring practices and military veteran's credit misappropriation." The claim was rejected and petitioner filed this action. Judgement was entered for petitioner in the trial court on December 5, 1995. Judgment was reversed on appeal May 21, 1998. This petition for writ of certiorari follows from the decision of that reversal.

Federal Due Process Issues Raised Below

Petitioner first asserted due process during his opposition to defendant's demurrer which contended incorrectly, that plaintiff was required to seek a writ of mandate pursuant to California Code of Civil Procedure (C.C.P.) § 1085 or § 1094.5 as part of exhaustion of administrative remedies. Petitioner asserted:

> Plaintiff was given notice of the Civil Service Commission decision of January 30, 1991 denying his request

> for a hearing, but the notice did not notify him of the next appropriate step to seeking a remedy. The notice provided that "only one amended appeal could be filed with the Civil Service Commission." Said notice failed to mention Code of Civil Procedure § 1094.6 which informs plaintiff that he has ninety days to file a § 1094.5 writ of mandamus or any other procedure that would be appropriate when a hearing is denied. [¶] Thus, defendant's failure to advise plaintiff of any available remedies following the denial of plaintiff's request for a hearing violates the due process protection to which he is legally entitled. (App. 19b & 20b pp.)

The trial court ruled:

> The county is not correct when it contends that plaintiff must file a Code of Civil procedure § 1094.5 writ of mandate as part of his obligation to exhaust administrative remedies. § 1094.5 is only available when there is a right to a "hearing." Here, plaintiff had no such right; it was discretionary with the Civil Service Commission. [¶] Finally, the fact that plaintiff may have a right under Code of Civil Procedure § 1085 does not preclude this action for damages. (*Id.* at p. 98.) (App. 14-16b)

For due process notice requirement as stated by this Court, see *Stana v. School Dist. of City of Pittsburgh* 775 F.2d 122, 127 (1985) quoting *Cleveland Board of Education v. Loudermill,* — U.S. —, 105 S.Ct. 1487 at p. 1493 "We have described 'the root requirements' of the Due Process Clause as being 'that an individual be given an opportunity for a hearing *before* he is deprived of any significant interest.' *Bodie v. Connecticut*, 401 U.S. 371, 379 [91 S.Ct. 780, 786, 28 L.Ed.2d 113] (1971) (emphasis in original); *see Bell v. Burson,* 402 U.S. 535, 542, [91 S.Ct. 1586, 1591, 29 L.Ed.2d 90] (1971)."

Petitioner further raised his due process rights during trial. Plaintiff's counsel objected to questions regarding documents proffered by defendants ". . . we are going down an area where there was no due process." Plaintiff's counsel also raised the issue of due process during direct questioning of plaintiff: "Have you ever had the fundamental due process right of presenting evidence in support of your claim before this trial?"

The court sustained the objection to the question.

Claim of Discrimination in Employment Against U.S. Veteran Raised Below

On appeal, appellants' acknowledged "he [plaintiff] did assert below a 'fundamental due process right' to a full evidentiary hearing." However, appellants contended that no due process rights exist for petitioner: ". . . where, as here, a civil service participant only claims a violation of civil service rules, as opposed to other independent causes of action, e.g., civil rights violations under federal Title VII . . ." (Defendants'/Appellants' state court brief at p. 22.)

Plaintiff alleged "discriminatory hiring practices and military veteran's credit misappropriation" and "discriminatory practices in the District Attorney Bureau of Investigation hiring process" in his claim against the county for damages. Throughout his civil complaint he alleged that "his score had been erased and re-marked, to take away his veterans points" to prevent his attaining the score to which he was entitled, in order to prevent his being hired. During trial it was rebutted that his score for education had been erased improperly, and it was established to the satisfaction of the jury that the reasons given were not legitimate but a pretext to get around his receiving a higher score. (Plaintiff/Respondent's state court brief at p. 33.) And, during trial defense counsel questioned the defendant assistant chief of

the bureau on the issue of veteran's credit misappropriation. (App. 7d – 9d)

The State Court Of Appeal Decision

The Court of Appeal reversed the judgment on plaintiff's jury verdict on the exclusive ground that he was not entitled to a civil action for damages. The court held that a mere applicant for civil service employment has no right or entitlement to such employment, and is not, nor should he be entitled to relief or recourse in excess of that provided to a discharged permanent employee, who has a protected property interest in continued employment. The court held that a writ of mandate was plaintiff's only form of judicial review, and that he would have been entitled to seek money damages if his complaint had alleged discrimination in violation of a civil rights statute. (App. 12a,) With respect to the writ of mandate (mandamus), the court found that the case relied on by plaintiff, *Fuchs v. Los Angeles County Civil Service Com.* (1973) 34 Cal.App.3d 709 [mandamus relief not available to employee to compel a hearing to review scoring of examinations] was not controlling. (App. 9a-11a.) The relevant facts of the two cases are identical. The court, however, offered no authority for applying the law differently to the two cases.

At first glance the court's ruling seems to say that plaintiff is precluded from suit for failure to seek mandamus review. On closer examination, however, it is clear that the court merely suggests mandamus as a *possible* remedy. Mandamus is irrelevant as it applies to this case, for two reasons: 1) the court has held that plaintiff was not entitled to a civil action for damages, and 2) that a mere applicant has no *right* to civil service employment. Regarding rights, the court's opinion, however, did not state any requirement upon plaintiff; the court did not say mandamus was *required* before plaintiff can proceed in a civil action. Here, the

mandamus issue could only have been relevant had the court found that plaintiff had a right that he failed to protect by not utilizing a statutory or common law remedy available to him. *See City of Fresno v. Superior Court* (1987) 188 Cal.App.3d 1484 [Employee dismissed his mandamus action attacking the boards decision shortly after the filing of hi tort action.] Here, the court of appeal applied the standard applicable when rights are involved, but applied the standard after it had determined that plaintiff had no rights. In other words, the court determined that plaintiff had no standing to sue, because he had no right. That being the case, it follows that he likewise could not have had rights sufficient to establish standing to invoke a mandamus proceeding.

The two types of writs discussed in this case are "Ordinary mandate" and "Administrative mandate."[2] See *Vernon Fire Firefighter v. Vernon* (1980) 107 C.A.3d 802 [On the distinction between traditional mandamus C.C.P. § 1085 and administrative mandamus C.C.P. § 1094.5].

With respect to the right of entitlement to employment, the appellate court found that *the county may exercise its*

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[2] [Ordinary mandate] may be issued by any court, except a municipal or justice court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person. The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. Code Civ. Pros. § 1086.

[Administrative mandate] is issued for the purpose of inquiring into the validity of any final administrative order or decision made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal, corporation, board or officer. Code Civ. Pros. § 1094.5.

exclusive right to hire, and to determine the method and means by which that operation is to be conducted.

Without making a determination, or legal finding, the court of appeals found that the only form of judicial review for plaintiff was to petition for a writ of mandate. That decision says that plaintiff is *not entitled* to remedy. The opinion refers extensively to C.C.P. § 1085 in lieu of § 1094.5. The court's ruling in this case has the effect of making the two very different sections of Code of Civil Procedure, interchangeable at will. Such unbridled use would result, as here, in the unintended effect of denying due process to many others in future claims. Such inevitable consequence demonstrates the need for clarification in the law by this Court.

The common law prerogative writ of mandamus developed into a broad remedy to compel performance of a ministerial duty or to restore rights and privileges of a public or private office. In California, the traditional method of reviewing the quasi-judicial determinations of an administrative agency is by certiorari: This was the practice in California until 1936, when the Supreme Court held that, under our Constitution, statewide administrative agencies cannot exercise judicial powers. See *Standard Oil Co. v. State Bd. of Equalization* (1936) 6 C.2d 557. Use of mandamus in review of decisions of statewide administrative agencies, created serious procedural problems not solved by statute or rule. To clarify the situation, the California legislature in 1945 enacted C.C.P. § 1094.5. The statute supplants the existing statutes on mandamus by a number of provisions applicable to administrative review. It ratified the judicially developed remedy, but did not create a wholly new system of review, ordinary mandamus procedure governs except as modified by statute. The decisive question is whether the agency exercises an adjudicatory function in considering the facts presented in an administrative hearing.

See *Temescal Water Co. v. Department of Public Works* (1955) 44 C.2d 90, 101. Thus there must be a final administrative order or decision. And it must be made in a proceeding in which a hearing is required by law and the agency exercises an adjudicatory function. See *Rich v. State Board of Optometry* (1965) 235 C.A.2d 591, 602 [where no hearing required, statute not applicable]; *Mahdavi v. Fair Employment Practices Commission* (1977) 67 C.A.3d 326, 334 [administrative mandamus not available where statute provided only for discretionary hearing].

With respect to review by mandamus, opinions in California are varied and differing in similar situations. However, it is not the situations that bring about he the diversity of opinions, but the courts different interpretations of how the law should apply. Extreme interpretations as to how mandamus should apply are illustrated by two cases exploring the issue, one with precise application, the other with broad application. The two cases are *David Knickerbocker v. City of Stockton, et al.*, (1988) 199 Cal.App.3d 235, and *Bunnett v. Regents of University of California* (1995) 35 Cal.App.4th 843. In *Knickerbocker* the court held that "... *Judicial* review of an agency determination can in no way be considered part of the *administrative* process which must be exhausted before a subsequent judicial action may commence." (emphasis in original). "... [administrative] judgment is not a complete bar but it operates against the party against whom it was obtained as an estoppel or conclusive adjudication as to those issues in the second action which were actually litigated and determined in the first action." Id. at p. 242. Although defendants argued that plaintiff "failed to exhaust his administrative remedies," (App. 8b.-9b.) the court did not so state. It concluded "plaintiff failed to pursue the only form of judicial review available to him." (App. 8a.). The appellate court relied on *Bunnett* with respect to the issue of mandamus, quoting from that case the court said that "... the absence of a hearing does not

make mandate inapplicable; it merely affects the form of mandate that must be invoked." The court went on to state that "[o]f the two types of review by mandate, ordinary mandate (Code Civ. Proc., § 1085) rather than administrative mandate (Code Civ. Proc., § 1094.5) is the type applicable, since ordinary mandate is used to review adjudicatory actions or decisions when the agency was not required to hold an evidentiary hearing." But see Lund v. California State Employees Ass'n. (1990) 222 Cal.App.3d 174 [could not challenge quasi-judicial decision without administrative record]; Lindell Co. v. Board of Permit Appeals (1943) 23 Cal.2d 303 [no provision for rehearing once matter had been finally closed]. In this case the court has in effect merged the two writs into one. The California legislature did not intend, nor did it envision such interpretation. See *Royal Convalescent Hospital, Inc. v. State Board of Control,* (1979) 99 Cal.App.3d 788 [writ of mandate was invented to supply a remedy where there is a specific legal right but no specific legal remedy.] In any event, both proceedings clearly require a right; § 1085 to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled; § 1094.5 for the purpose of inquiring into the validity of any final administrative order or decision made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal.

Petitioner was not entitled to invoke mandamus, because he was not harmed as a result of an administrative determination. Nor could show an abuse of the commission's discretion in denying him a hearing when it was well within the commission's discretion to do so. Neither statutory nor common law requires a person to attempt to invoke mandamus to compel a quasi-judicial body to do an act not

enjoined by law. Settling the conflict in California law as to when mandamus is *not* required is what is necessary for the protection of the due process rights of those citizens who will be harmed without remedy.

REASONS FOR GRANTING THE WRIT

Countless decisions of this Court have imposed on state and local agencies both substantive and procedural due process requirements regarding the rights and protections afforded United States citizens in the context of their public employment interest. The great majority of those decisions flow from claims brought by citizens who are covered under statutes enacted for the purpose of protecting specific classes of persons from discrimination in employment, e.g., Title VII, 42 U.S.C. Petitioner, a U.S. war veteran citizen,[3] brought a claim for discrimination against him in the preemployment selection process of a public entity. As an applicant for public employment, he was not covered under any statute specifically conferring protection upon his class of persons, neither as a war veteran nor as a plain citizen; nor was he entitled to procedural and substantive due process rights afforded permanent employees. These restrictions on applicants in the classified civil service selection process work to undermine the rules that have been developed over the years to safeguard against inappropriate appointments in

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[3]Since the judgment in this case, the issue of due process protection regarding veterans' preemployment rights has been addressed by the United States Congress: United States Code Title 38 § 4311 was enacted to provide veterans a remedy for damages arising from discriminatory acts which violate their employment rights. (*See* Rights and protections relating to veterans' employment remedy [2 U.S.C. § 1316(a), (b)]; Enforcement of rights with respect to state and private employers [38 U.S.C. § 4323]) *See* West Annotated United States Codes Title 38 (1998 Cumulative annual pocket part.) Petitioner respectfully requests that the Court address the question of due process protection for veterans in public employment selection.

public employment. While court decisions are clear as to some matters, other issues remain unresolved, causing confusion, conflict, unnecessary litigation, and in many instances loss of constitutional rights resulting from administrative determinations and state court decisions.

This case presents several such issues, and the protracted litigation that those issues have spawned in this and other cases, demonstrates the need for clarification by this Court.

I

First, this case poses the question whether an applicant who is discriminated against in public employment selection is limited to civil actions cognizable only under Title VII? Put another way, whether an applicant who is harmed by discriminatory hiring practice in violation of public employment statutes, is entitled to a factual determination on that issue in a suit at common law.

What constitutes discrimination in public employment selection? Court decisions usually do not use the term discrimination unless an action is brought under a civil rights statutes. Administrative agencies do not give the term respect unless an action against the public entity claims violations of civil rights statutes. The term, however, cannot be limited to activities and actions in public employment only cognizable under civil rights statutes. See *Accounting Corp v. State Board of Accountancy,* 34 Cal.2d 196 [where a statute discriminates against individuals and such discrimination does not have any relation to the public interest]; *Cooperrider v. Civil Service Com.* 97 Cal.App3d 495 [fundamental right to apply for public service position without invidious discrimination]; *Stationery Engineers Local 39 et al., v. County of Sacramento et al.* [awarding points to promote any lower scoring employees was discrimination]. In this case, at the administrative level petitioner claimed the employing agency systematically engaged in scoring

undeserving applicants higher than deserving applicants, which resulted in hiring "candidates of choice over more qualified candidates." Petitioner followed with his claim to the public entity alleging "discriminatory hiring practices." The claim was not acted on. Statutory civil rights remedies for certain classes should not work as the exclusive source of claims of discrimination in public employment to the exclusion of other non protected classes of applicants for public employment who need relief. A decision by this Court on the issue in this case is required to provide state courts and administrative agencies with guidance on what constitutes discrimination in the context of public preemployment.

II

Secondly, where state and local government employment practices violate statutory hiring requirements, and it results in the appointment of nonqualified over qualified persons, should competing qualified applicants enjoy heightened due process protections in an action challenging the validity of the selection process?

The Constitution, federal and state, requires that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.

In *Board of Regents v. Roth* 408 U.S. 564, 569 this Court made it clear that "the requirements of due process apply only to the depravation of interest encompassed by the Fourteenth Amendment's protection of liberty and property."

> Property interests . . . are created and their dimensions are defined by existing rules and understandings that stem from an independent source such as state law — rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. Id. at 576.

The California Court of Appeals, noting the importance the California Supreme Court placed on the "merit principle," has recognized that ". . . the cornerstone of the Constitutional merit principle is a competitive examination process that determines merit, effectiveness and fitness for appointment and promotion." *Lund v. California State Employees Assn.* (1990) 222 Cal.App.3d 174, 186, citing *Pinion v. State Personnel Board* (1938) 29 Cal.App.2d 314, 319, *In Pacific Legal Foundation v. Brown* (1981) 29 Cal.3rd 168, the Supreme Court noted the emphasis that the legislature placed on the merit principle:

> in designating the statutes that may be superseded by a memorandum of understanding without legislative approval, the legislature excluded those statutes relating to classification, examination, appointment, or promotion, areas in which potential conflict with the merit system of employment would most be likely to occur. *Id.* 183.

To demonstrate a property interest, therefore, plaintiff must show that under California law he had a legitimate claim of entitlement to employment as investigator with the Los Angeles County District Attorney's Office. This opportunity was not afforded petitioner at the administrative level through the statutory quasi-judicial discretionary procedures provided. Petitioner's only opportunity to show a legitimate "property interest" entitlement to employment, based upon law that protects his interest against the public entity violating its own laws, was through a civil trial. Only through a civil action are the scores of competing applicants discoverable, particularly the written scores which represents the "objective" part of examination. (App. 30-31c.)

In *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) this Court held that "due process is flexible and call for such procedural protection as the particular situation demands," more specifically:

> due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous depravation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest" Id. at 335.

In this case, petitioner, the government, and the public shared the same interest. See *Wilber v. Thornburgh,* 928 F.2 1185, 1192 (D.C. Cir.) regarding court's comment on the nation's prosecutorial agency [the Justice Department "is not just any employer" and that it "has a legitimate interest in maintaining public confidence and trust].

Petitioner was only able to obtain evidence that the District Attorney Bureau had appointed applicants who had failed the written examination, and other exam standards, at the trial. An applicant is only able to view *his* examination scores at the administrative level. Applicants are entitled to examination information regarding the overall exam if a hearing is granted in his matter. (App. 17c) The scores of competing applicants are only discoverable in a civil trial under the supervision of the court [even under court order, the court could not obtain the actual audit of the exam, but was only given a summary to review in camera; and petitioner's counsel was not able to review the summary]. (See App. 4d)

The court of appeals decision that petitioner should have sought mandamus review, suggesting that "[T]he court will review the application to the commission requesting a hearing and determine if it shows compelling merit so that its denial demonstrates an abuse of discretion." places an insurmountable burden on applicants situated like petitioner, because "[a]buse of discretion is established if the respondent has not proceeded in a manner required by law, the order or decision is not supported by the findings, or the

findings are not supported by the evidence." See *Civil Service Commission v. Velez,* 14 Cal.App.4th 115. In the controlling case here relied on by petitioner, *Fuchs v. Los Angeles County Civil Service Com.*, 34 Cal.App.3d 709, 712, *supra,* the "trial court rejected petitioner's offer of other evidence . . ." In this matter, the appellate court concluded

> A mere *applicant* for civil service employment, who has no right or entitlement to such employment, is not and should not be entitled to judicial relief or recourse in excess of that provided to a *discharged permanent employee,* who has a protected property interest in continued employment. (emphasis in original) (App.)
>
> We are particularly persuaded particularly persuaded that judicial review by way of a proceeding in mandate was the only remedy available to available to plaintiff considering that a civil service employee who has been discharged may not initially bring an action seeking civil damages." *City of Fresno v. Superior Court* (1987) 188 Cal.App.3d. 1484; *Valenzuela v. State of California* (1987) 194 Cal.App.3d. 916, 920 ["[a]n aggrieved civil service employee must use all agency administrative procedures, including available appellate review, before otherwise resorting to the courts"]; see also *Boren v. State Personnel Board* (1951) 37 Cal.2d. 634, 637.

Each of these cases relied on by the court involves a permanent employee. Such cases are irrelevant, because permanent employee grievances and litigation obviously do not concern the employment selection process. The disadvantage, as pointed out by this case, is that the exhaustion requirements some courts place upon applicants are the same as those required of permanent employees, but without the statutory protections that come with vested rights. Consequently, where an applicant challenges the civil service preemployment examination process, he is not afforded the statutory protections that permanent employees enjoy as a

part of their remedies. The decision in the case, if left standing, disallows applicants the means to ever establish a property interest sufficient to bring a civil action for damage in a suit at common.

III

Third, the public employment examination that is the subject of this action was for District Attorney Investigator for the County of Los Angeles, and only qualified law enforcement officers were permitted to compete in the hiring process. (App.) Because petitioner sued and obtained judgment against a major law enforcement entity over its examination scoring practices, and exposed what is commonly characterized as "cheating," a certain disdain attaches within the law enforcement community as a result of such exposure — particularly in the District Attorney's Office which is charged with prosecuting such violations. (See App. 12C) Such exposure causes law enforcement officer peers to contemplate their own as well as other's level of qualification, especially investigators within the District Attorney's Office. The reversal of the judgment without a factual factual determination as to qualification issues, not only leaves such doubts and negative impressions in place, but also tends to aggravate them.

In order to show deprivation of liberty interest in the employment context, courts have made it clear that it must be shown that action complained of be viewed as a determination that reflects adversely on the character of the person. See *Stana v. School Dist. of City of Pittsburgh* 775 F.2d (1985) 122, 125 fn.1, Removal from eligibility list for reasons other than objective test scores could be viewed as determination that reflects adversely on the character of the person affected, citing *Roth,* 408 U.S. 564, 573 *supra,* viewed in that light, it could implicate the liberty interest in following a chosen profession, and *Hampton v. Mow Sun*

Wong, 426 U.S. 88, 102 which the supreme court has repeatedly held can be denied only after the individual has been afforded the core content of procedural due process. The Court also held that to state a valid claim of protected liberty interest, "a plaintiff must plead that the allegedly stigmatizing information was 'published' or otherwise disseminated by his government employer to the public." *Chabal v. Reagan,* 841 F.2d 1216, 1223 (3d cir. 1988) (citing *Biship v. Wood,* 426 U.S. 341, 348.) In addition to petitioner being stigmatized as a result of having successfully sued a major law enforcement entity, he has been twice branded by having that judgment reversed. While the reversed-judgment does not reach the issue as to whether plaintiff's claim was without merit, he is nonetheless deemed to have brought the claim wrongfully. The publishing of the court's opinion was also published in the legal community news journals.

The stigma that has attached to petitioner, both inside and outside the law enforcement community, has negatively affected his character as well as his ability to pursue higher aims in his chosen profession. And, ironically, applicants participating in the public employment process have considerably less rights than before plaintiff sued, because the opinion, as it stands, equips public entities with immunity against challenges to the integrity of the entry level examination process.

The judgment of the court of appeal reversing the judgment in this case is a proscription for the public entity to continue to violate the law with impunity. Because there will be no way to effectively challenge examination results, many citizens will be forced to forego their constitutional due process rights.

IV

The power of an appellate court asked to assess the sufficiency evidence supporting a judgment begins and ends with a determination of whether or not there is any substantial evidence that will support the trier of fact's conclusion. The trial court's findings of fact will be upset on appeal only when there is no substantial evidence to support them. Mariage of Mix (1975) 14 Cal.3d 604, 614; Stevens v. Parke, Davis & Co. (1973) 9 Cal.3d 51, 64. Substantial evidence is that which is of legal significance reasonable, credible, and of solid value. Estate of Tweed (1952) Cal.App.2d 638, 664. In applying the substantial evidence test, the courts view the evidence in the light most favorable to respondent. Nestle v. City of Santa Monica (1972) 6 Cal.3d 920. It accepts respondent's evidence as true and resolves all conflicts in respondent's favor and draws all favorable inferences that may reasonably be concluded to uphold the judgment. Hasson v. Ford Motor Co. (1977) 19 Cal.3d 530, 544; Hicks v. Reis 21 Cal.2d 654.

In deciding this case, the standard of review according to the rules of common law should have been applied. However, the appellate court in this case made no substantial evidence determinations; it viewed no evidence in the case favorable to respondent/petitioner; it did not accept respondent's evidence as true; it did not resolve any conflicts; and lastly, it drew no favorable inferences that may reasonably be drawn to uphold the judgment. The appellate court's opinion in this case is simply a conclusion that plaintiff was not entitled to a civil action.

Upon the jury's verdict in this case, petitioner was entitled to have his case decided by the State Court of Appeals pursuant to the standard of review established by common law. However, the facts having been tried by the jury in this case, were otherwise re-examined than according to the rules of the common law. The court having simply con-

cluded that petitioner was not entitled to proceed in his civil action before a jury, and reversing the judgment in this matter thereon, petitioner was deprived of his right to trial by jury in violation of the Seventh Amendment to the United States Constitution.

CONCLUSION

For the reasons stated, the writ of certiorari should be granted.

November 10, 1998

Respectfully submitted,

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APPENDIX A

APPENDIX A-1

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL
OF THE
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

EMILLE V. DECUIR,

Plaintiff and Respondent,

v.

COUNTY OF LOS ANGELES et al.,
Defendants and Appellants.

B099918
(Super. Ct. No. BC052064)
COURT OF APPEAL - SECOND DIST.
FILED
MAY 21, 1998
JOSEPH A. LANE, CLERK
GUZMAN, DEPUTY CLERK

APPEAL from a judgment of the Superior Court of Los Angeles County, John R. Stanton, Judge. Reversed.

De Witt W. Clinton, County Counsel, S. Robert Ambrose, Assistant County Counsel, Johanna M. Fontenot, Deputy County Counsel, Greines, Martin, Stein & Richland LLP, Martin Stein, and Edward L. Xanders for Defendants and Appellants.

Stephanie M. Davis for Plaintiff and Respondent.

INTRODUCTION

Defendants and appellants the County of Los Angeles, Ronald Maus, Frederick Leonhardt, and David Walters appeal from a judgment after jury trial in favor of plaintiff and respondent Emille V. DeCuir. The jury awarded plaintiff $380,000 in lost future wages based on plaintiff's allegations that defendants' examination process for the civil service position of District Attorney Investigator was unfair and resulted in his receiving a lower score than he deserved, thus precluding his being selected for the position. Defendants contend on appeal that plaintiff's exclusive form of judicial review was a proceeding in mandamus rather than a jury trial, that defendants are immune from damages, and that plaintiff failed to establish causation as a matter of law. We agree with defendants' contention that plaintiff was limited to bringing a mandamus proceeding to challenge defendants' actions. We therefore reverse the on that basis, without the necessity of addressing defendants' remaining contentions.

FACTUAL AND PROCEDURAL BACKGROUND

In March 1989, after submitting an application, plaintiff took the civil service examination for the position of investigator for the Los Angeles County District Attorney's Office. He first passed a qualifying written examination, which enabled him to participate in an oral interview. He received a score of 90 on the oral interview, which score included a 10 point veteran's credit. This score placed him in Band 2 on a six month eligibility list.[1] At the end of six months,

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[1] Pursuant to Los Angeles County Civil Service Rules, passing applicants are placed on an eligibility list which is divided into groups or "bands" based upon the applicants' final examination scores. The scoring ranges for the bands are fixed as follows: applicants scoring 95-100 percent are placed in Band 1, applicants scoring 89-94 percent are placed in Band 2, applicants scoring 83-88 percent are placed in

plaintiff's eligibility expired without his being offered employment as a District Attorney (D.A.) Investigator.

In May 1990, after again submitting an application and passing a qualifying written examination, plaintiff was permitted to participate in an oral interview for the position of D.A. Investigator. He arrived for his interview at 2:30 p.m. and was given 30 minutes to prepare an essay, which would be used during the oral interview but did not receive a formal score.[2] After finishing the essay, plaintiff was then required to wait until approximately 4:15 p.m. for his oral interview to begin. Plaintiff's interview lasted 37 minutes, 10 minutes less than his 1989 interview. At trial, plaintiff testified that defendants rushed the interview and kept checking their watches. The oral interview was conducted by three interviewers (the individual defendants), who happened to be the same three who interviewed plaintiff in March 1989.

In scoring applicants, each interviewer completed an evaluation form prepared by the District Attorney's personnel office, which required the interviewer to rate the applicants in the following seven categories: education, experience, knowledge of position duties and responsibilities, comprehension and communication skills, demonstrated ability to obtain information from others including the whereabouts of witnesses or suspects, demonstrated ability to prepare and present information for court testimony, and demonstrated ability to use sound judgment while conducting investigations and serving subpoenas and warrants. Unlike the other five categories, the categories for education and experience were scored based upon objective standards. Applicants were rated either "acceptable," "good," or "outstanding" in the education and experience categories. The

[2]The written essay was not part of the examination process when plaintiff first applied in March 1989.

same three ratings were used for the remaining five categories, in addition to a lower rating of "limited."

Plaintiff received a score of 77 on his oral interview, plus the veteran's credit of 10 points, for a final score of 87, placing him in Band 3 on the six month eligibility list. Plaintiff reviewed the three evaluation forms for his interview and saw erasure marks where his education rating apparently had been changed from "good" to "acceptable."[3]

Plaintiff filed a letter of protest with the Chief Administrative Office, which rules on any protest regarding examinations given by county departments, acting as the county's director of personnel pursuant to the county's Civil Service Rules. Plaintiff complained that he deserved a "good" rating on education, and claimed there was "too great a contrast" between several ratings he received and the corresponding sections of the evaluation forms where the interviewers wrote in their narrative comments.

The Chief Administrative Office, as well as the District Attorney's Office, investigated plaintiff's protest, concluding that his score was correct. The Chief Administrative Office denied plaintiff's appeal, notifying plaintiff he had failed to identify any error in the determination of his score. The Chief Administrative Office also informed plaintiff he could appeal its ruling to the Civil Service Commission.[4]

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[3]The District Attorney's Office changed the objective standards for education between 1989 and 1990, redefining a "Bachelor's Degree from an accredited college with specialization in administration of justice, criminology, or police science and administration" from "acceptable" in 1989 to "good" in 1990. Plaintiff had an associate of arts degree in police science and administration, and a bachelor's degree in public affairs.

[4]Rule 4.03, subdivision B, and Rule 7.20 allow an appeal regarding a scoring grievance to the Civil Service Commission, but give the commission discretion to deny a hearing on the merits.

Plaintiff filed an appeal with the Civil Service Commission, contending the Chief Administrative Office "misinterpreted the educational qualifications guidelines," and that the interviewers reduced his score by 10 points by changing his education rating after they realized he would receive a 10 point veteran's credit. He also claimed he was entitled to a higher rating in the "communication skills" category, and stated that his interview had been unduly delayed and then rushed, all to his disadvantage.

The Chief Administrative Office wrote to the commission, addressing each of plaintiff's contentions. Thereafter, at a September 5, 1990, meeting, at which plaintiff's counsel and a county representative gave oral argument, the commission determined that a reinterview was warranted, rather than a full hearing on plaintiff's scoring grievance.

A reinterview was scheduled for plaintiff for October 1990. Plaintiff appeared for the interview but objected when he was told to prepare another written essay. He was told the interview could not proceed without his first completing the essay, which he declined to do.

On November 1, 1990, the District Attorney's personnel office informed plaintiff and his attorney that he could reinterview without providing another written essay. The reinterview was scheduled for November 20, 1990.

However, on November 7, 1990, plaintiff again petitioned the Civil Service Commission, stating that he felt it was not in his interest to attempt a reinterview. He repeated his request for a hearing on the merits by the commission, which request the commission denied. Plaintiff then filed a government claim for damages with the county. The claim was rejected.

On March 31, 1992, plaintiff filed a civil complaint for money damages in Los Angeles County Superior Court (the present action). Defendants demurred on the bases that

plaintiff had not and could not state a statutory basis for damages, that his exclusive civil service remedies did not include a civil damages suit, and his failure to seek a writ of mandamus precluded a civil damages suit. Defendants' first demurrer and three more which followed were sustained, but with leave to amend, Eventually, defendants' fifth demurrer to plaintiffs fourth amended complaint was overruled. Defendants filed a petition for writ of prohibition or mandate with this court, which was summarily denied. Defendants also filed a motion for judgment on the pleadings in the trial court, which was denied.

A jury trial was held on plaintiff's claims that the examination process and resulting scores were unfair, at the conclusion of which the trial court denied defendants' motion for directed verdict. The jury found in plaintiff's favor and awarded him $380,000 in damages for lost future wages. Judgment was entered on the jury verdict on December 5, 1995.

Defendants filed post-trial motions to vacate and set aside the judgment and for a new trial. The trial court denied the motions. Defendants filed notice of appeal on January 19, 1996.

DISCUSSION

Under the county's Civil Service Rules, which have the force and effect of law,[5] an applicant for employment with the county who believes an error has been made in his or her examination may first file written protest with the Director of Personnel, in this case the Chief Administrative Office. The applicant may then appeal to the commission from the

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[5]Rule 1.01 states that "Pursuant to the California Constitution and the Charter of the [C]ounty of Los Angeles, the Los Angeles County board of supervisors does prescribe and adopt these Rules, which shall have the force and effect of law."

Chief Administrative Office's ruling. However, the commission has discretion whether to grant a hearing or make a decision on the merits based on a review of written materials submitted by the parties.[6]

Rule 1.02 provides: "These Rules are prescribed for the purpose of carrying out the Charter provisions, of assuring the continuance of the merit system, of promoting efficiency in the dispatch of public business, and of assuring all employees in the classified service of fair and impartial treatment at all times subject to Merit System Standards and appeal rights as set forth in these Rules, To these ends, *the County will exercise its* ***exclusive right to*** *. . . hire* or rehire, . . . and to determine the methods, means and personnel by which the county's operations are to be conducted." (Italics and bold emphasis added.)

Although he is not a civil service employee, plaintiff, as an applicant for employment within the civil service system, is nonetheless subject to the provisions of the Civil Service Rules. As set forth in the margin, the Rules refer specifically to the grievance procedure to be followed by an applicant for employment who believes an examination rating error has

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[6]Rule 7.20, "Protests against ratings to the director of personnel," provides in pertinent part: "If the applicant believes an error has been made . . . in the rating given him/her on any part of the examination, or that any other error has been made, . . . the applicant may . . . make a protest in writing stating specifically where an error has been made . . . Upon receipt of a written protest or request for re-scoring or re-rating, a review of the protest shall be made by the director of personnel. . . . Any person aggrieved may appeal to the commission [from] the rulings of the director of personnel pursuant to Rule 4. . . ." Rule 4.03, subdivision B, provides that "In all other cases [other than regarding discharge or reduction of a permanent employee (Rule 4.03, subd. A)] provided for in Rule 4.01 [which refers to applicants for employment], the commission *may, at its discretion,* grant a hearing or make its decision on the merits based on a review of written materials submitted by the parties concerned. . . ." (Italics added.)

been made. Plaintiff initially pursued these procedures by filing a written protest with the Chief Administrative Office and then appealing to the commission when the Chief Administrative Office upheld his score. The commission determined a reinterview was appropriate, but plaintiff later declined to be reinterviewed, electing instead to again ask the commission for a full hearing. When the commission denied his request, plaintiff filed the present action.

We agree with defendants that in so doing plaintiff failed to pursue the only form of judicial review available to him: a petition for writ of mandate wherein he could attempt to demonstrate to the court that the defendant county had abused its discretion. The proper method of obtaining judicial review of most public agency decisions is by instituting a proceeding for a writ of mandate. (*Bunnett v. Regents of University of California* (1995) 35 Cal.App.4th 843, 848.) We find that in this case, plaintiff's only judicial recourse was such a proceeding.

As occurred in *Bunnett*, plaintiff attempts to justify bringing a civil action for damages by pointing out that under the Rules the commission had the discretion to deny him an evidentiary hearing. (See *Bunnett, supra*, at p. 849; see also Rule 4.03, subd. B.) However, as further discussed below, the absence of an evidentiary hearing does not make man-

date inapplicable; it merely affects the form of mandate that must be invoked. (*Bunnett, supra*, at p. 849.) Of the two types of review by mandate, ordinary mandate (Code Civ. Proc., § 1085) rather than administrative mandate (Code Civ. Proc., § 1094.5) is the type applicable here, since ordinary mandate is used to review adjudicatory actions or decisions when the agency was not required to hold an evidentiary hearing. Judicial review by way of administrative mandate is available only if the decision resulted from a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the agency. (*Bunnett, supra*, at p. 848.) When review is sought by means of ordinary mandate, generally the court's inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. (*Id.* at p. 849.)

Plaintiff relies on *Fuchs v. Los Angeles County Civil Service Com.* (1973) 34 Cal.App.3d 709 for the proposition that because he has no *right to* a hearing he has no obligation to pursue a petition for ordinary mandate and, therefore, is entitled to proceed directly with a civil action for damages. Plaintiff misinterprets and misapplies *Fuchs.*

Fuchs was a Los Angeles Deputy District Attorney, grade IV, who applied for a promotion that required completion of a civil service examination and oral interview. Fuchs was dissatisfied with the scores he received on both the examination and oral interview. When Fuchs did not qualify for the promotional list, he appealed his score to the Los Angeles Civil Service Commission. The commission denied Fuchs a hearing. Fuchs sought relief by filing for a writ of mandate or certiorari to compel a hearing by the commission to present his objection to the design, grading, and conduct of the promotional examination. The trial court denied him relief and its judgment was affirmed on appeal.

At the time of the *Fuchs* case, the Civil Service Rules were substantially the same as those applicable in the present matter. Except in cases of discharge, demotion or reduction, or suspension in excess of five days, a hearing is only available at the discretion of the commission. On that basis, Fuchs could not sustain his claim that he was entitled to a hearing as a matter of right.

Plaintiff argues that his situation is the same as in *Fuchs* because having been denied a hearing by the commission he was injured without an available remedy at the administrative level. From that premise, plaintiff reasons that being without a right to a hearing before the commission, he is excused from seeking review by ordinary mandate. Plaintiff's rationale is that "[w]here . . . a hearing was not granted, review is unavailable; not because there was no record, but rather, because there was no application of administrative law upon which possible abuse could be established and thereby, a determination made as to '. . . whether the decision was arbitrary, capricious, or entirely lacking in support . . . (*Bunnett, supra,* 35 Cal.App.4th at 849).' Once a hearing has been provided, the commission's discretion, as it is applied under the law, is reviewable. However, where a hearing is not required, and no hearing has been granted, there is no statutory provision making the granting of a hearing compulsory."

Plaintiff's premise is flawed and he is not exempted from pursuing the traditional remedy challenging a determination of an administrative agency. The commission's denial of a hearing is a reviewable determination. That was the context in which Fuchs's claim was presented and reviewed. The fact that Fuchs did not prevail does not establish that a petition for ordinary mandate will automatically fail. The court will review the application to the commission requesting a hearing and determine if it shows compelling merit so that its denial demonstrates an abuse of discretion. In

summary, mandate is not only available to review the action of the commission where there is a hearing, but is the appropriate procedure to test the commission's denial of a hearing. It is noteworthy that the *Fuchs* court concluded that there was "[n]o evidence . . . that the presence of any particular Department of Personnel employee at petitioner's oral interview affected the resulting score, or was prejudicial to the petitioner." (*Fuchs v. Los Angeles County Civil Service Com., supra,* 34 Cal.App.3d at p. 716.) Implicitly, if the court had concluded there was evidence of prejudice in Fuchs's application for a hearing, the court would have formulated a remedy which could include an order compelling the commission to hold a hearing.

We are particularly persuaded that judicial review by way of a proceeding in mandate was the only remedy available to plaintiff considering that a civil service *employee* who has been *discharged* may not initially bring an action seeking civil damages. (*City of Fresno v. Superior Court* (1987) 188 Cal.App.3d 1484; *Valenzuela v. State of California* (1987) 194 Cal.App.3d 916, 920 ["[a]n aggrieved civil service employee must use all agency administrative procedures, including available appellate review, before otherwise resorting to the courts"]. See also *Boren v. State Personnel Board* (1951) 37 Cal.2d 634, 637.) "A . . . barrier to asserting a claim for damages, particularly in employment discharge cases, is the rule that a separate action for damages may not be instituted until the aggrieved party has pursued a § 1094.5 proceeding and has obtained a final judgment in his or her favor, invalidating the administrative action. This is usually considered a jurisdictional prerequisite, and a demurrer or summary judgment will lie."[7] (CEB,

[7] Although reference is made only to Code of Civil Procedure section 1094.5, the same barrier applies to actions brought pursuant to the ordinary mandate procedures specified in Code of Civil Procedure section 1085.

Cal. Administrative Mandamus (2d ed. 1989) § 1.13 at p. 13, and cases cited therein.) A mere *applicant* for civil service employment, who has no right or entitlement to such employment, is not and should not be entitled to judicial relief or recourse in excess of that provided to a *discharged permanent employee,* who has a protected property interest in continued employment. (See *Eistrat v. Board of Civil Service Commrs.* (1961) 190 Cal.App.2d 29, 32-33.)

The record fully supports defendants' contention that plaintiff, in his operative complaint, at trial, or at any other time, made no allegations of discrimination or other practices cognizable under the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) or Title VII (42 U.S.C. § 2000e et seq.), for example, which would have made a civil action for damages appropriate. Plaintiff's having failed to petition the superior court for writ of mandate, the only method of judicial review available to him, the judgment on jury verdict is wholly unsupported and must be reversed.

In view of our conclusion regarding the foregoing issue, we do not find it necessary to address the remainder of the issues raised on appeal by defendants.

DISPOSITION

The judgment is reversed and the trial court is directed to enter judgment in favor of defendants on plaintiff's complaint. Costs an appeal are awarded to defendants and appellants.

CERTIFIED FOR PUBLICATION

VOGEL (C.S.), P.J.

We concur:

EPSTEIN, J.

HASTINGS, J.

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION FOUR
DATE 06/18/98

EMILLE V. DECUIR
16278 Bright Morning Ct.
Riverside, CA. 92503

RE: DECUIR, EMILLE V.

vs.

Los Angeles, County of
2 Civil B099918
Los Angeles NO. BC052064

THE COURT:
Petition for rehearing denied.

Second Appellate District, Division Four, No. B099918
S071519

IN THE SUPREME COURT OF CALIFORNIA

EMILLE V. DECUIR, *Respondent*

v.

COUNTY OF LOS ANGELES ET AL., *Appellants*

SUPREME COURT
FILED
AUG. 12, 1998
ROBERT WANDRAFF, Clerk

Deputy

Respondent's petition for review DENIED.

GEORGE
Chief Justice

APPENDIX B

APPENDIX B-1

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COURT OF APPEAL — STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

EMILLE V. DECUIR
Plaintiff,

vs.

COUNTY OF LOS ANGELES
DOE 1, DOE 2, DOE 3, DOE 4, DOE 5
Defendant.

CASE NO. BC 052064

PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Petitioner/Defendant COUNTY OF LOS ANGELES, respectfully applies for a Writ of Prohibition and/or Mandamus or other appropriate relief, and by its verified Petition alleges:

1. Petitioner is the defendant in an action for breach of mandatory duty now pending in the Respondent Court, entitled EMILLE V. DECUIR v. COUNTY OF LOS ANGELES and was assigned Case No. BC 052 064.

2. Respondent is the Superior court of the State of California in and for the County of Los Angeles. The proceeding from which relief is sought was presided over by the Honorable Loren Miller, Jr., Judge in Department "48" of the Los Angeles Superior Court on May 24, 1993.

3. Petitioner is the Defendant in the above-referenced action and plaintiff DeCuir is the Real-Party-In-Interest.

4. This court is petitioned in its supervisory role over Respondent Superior Court, for appropriate prerogative relief on the grounds that the Respondent Court, on May 24, 1993 in Department "48", Honorable Loren Miller, Jr., Judge, abused its discretion in overruling *Defendant's Demurrer* with respect to plaintiff's failure to comply with the Tort Claims Act and exhaust his administrative remedies in excess of its jurisdiction.

SPECIFICATION OF ISSUES IN CONTROVERSY

ISSUE NO. 1;

Has Plaintiff failed to comply with the requirements of the California Tort Claims Act so as to bar any cause of action for violation of a mandatory duty?

ISSUE NO. 2:

Has Plaintiff failed to exhaust his administrative remedies so as to deprive the Court below of jurisdiction?

COMBINED STATEMENT OF FACTS AND STATEMENT OF THE CASE

INTRODUCTION

This action arises out of the alleged wrongful conduct of the COUNTY OF LOS ANGELES ("COUNTY") in administering to plaintiff the examination for the position of "Investigator, DA" with the office of the Los Angeles County District Attorney. (Fourth Amended Complaint, paragraph 11) At the time he applied for the position he was employed by the COUNTY as a Deputy Marshal (See Employment Application, Exhibit B to Fourth Amended Complaint.)

Plaintiff alleges that:

> "On May 8, 1990; Defendants administered such examination to plaintiff as a candidate for employment. The administering of such examination to plaintiff on that occasion did not assure the continuance of the merit system, failed to promote the efficiency in the dispatch of public business and failed to assure all examinees in the classified service of fair and impartial treatment, . . ." (Plaintiff's Fourth Amended Complaint, Paragraphs 11 and 35).

Plaintiff further alleges that, as a result of defendant's failure to conduct plaintiff's examination in the required manner, plaintiff was deprived of employment by defendant as an "Investigator D.A." (Plaintiff's Fourth Amended Complaint, Paragraph 32).

On June 11, 1990 plaintiff appealed his final score to the Chief Administrative office which denied the appeal (paragraph 27, 4th amended complaint). Plaintiff then appealed to the Civil Service Commission ("C.S.C."), an independent, quasi-judicial administrative body on July 16, 1990, which neither granted nor denied a hearing but issued an interim order to re-interview plaintiff. (paragraph 28).

On May 22, 1991, plaintiff filed a claim for damages with the Los Angeles County Board of Supervisors, and said claim was denied. (Fourth Amended Complaint, Paragraph 33).

Plaintiff filed his complaint on March 31, 1992.

On July 15, 1992 the court below (Judge Richard A. Paez presiding) sustained defendant's demurrer with leave to amend. On September 23, 1992 the Court below (Judge Charles C. Lee presiding) struck plaintiff's first amended complaint pursuant to L.D. P.M. 125 with 20 days leave to amend. On January 29, 1993, the Court below (Judge Cary Nishimoto presiding) sustained defendant's demurrer to plaintiff's second amended complaint with 30 days leave to amend, and on March 15, 1993, the court below (Judge Nishimoto) again sustained defendant's demurrer to plaintiff's third amended complaint with leave to amend.

In sustaining defendant's demurrer to the second amended complaint this court found plaintiff's tort claim to have been untimely filed, precluding this civil complaint (*See* Minute Order 1/29/93). The court ruled that plaintiff's cause of action accrued September 5, 1990, and later events were irrelevant to alter the accrual date. The "claim having been filed May, 1991 is beyond 6 months from September 5, 1990 and was untimely, there having been no petition for relief within the subject period or at all."

While agreeing with the result defendant continues to contend that the date of accrual for claim filing purposes was May 8, 1990, when the alleged wrongful acts were committed, not when the independent administrative body, the C.S.C. (see defendant's request to take judicial notice, filed herein March 12, 1993) considered plaintiff's appeal.

Nothing occurred subsequent to May 8, 1990 involving defendant with the exception that the County complied with the C.S.C.'s interim order to provide plaintiff a re-interview,

first requiring another essay be submitted by plaintiff on October 22, 1990 (paragraph 29 of 4th amended complaint) and then correcting its error on November 1, 1990. Plaintiff did not appear at the re-interview on November 20, 1990 (paragraph 30).

Consequently, the Civil Service Commission denied plaintiff's request for hearing January 30, 1991. Plaintiff alleges that the Civil Service Commission "had the authority to grant plaintiff relief by adding 10 points to the score accorded (sic.) plaintiff by defendants, thereupon placing plaintiff in the highest Band and providing plaintiff with all the relief sought by him on the request for a hearing." (4th Amended Complaint paragraph 31).

Plaintiff did *not* seek a writ of mandate directing the Civil Service Commission to grant him a hearing subsequent to its denial of his request.

Consequently, plaintiff's fourth amended complaint against defendant is barred pursuant to Government Code Section 900 *et seq.*, and his failure to exhaust administrative remedies by seeking to compel a hearing before the C.S.C. deprived the court below of jurisdiction to consider any cause of action based on alleged improprieties in the examination procedure.

Defendant's demurred to plaintiff's 4th amended complaint on the foregoing grounds April 12, 1993, *inter alia*. The demurrer was overruled May 24, 1993.

MEMORANDUM OF POINTS AND AUTHORITIES

PRELIMINARY STATEMENT

Defendant petitions for a writ of mandate/prohibition to vacate and set aside an Order of the Superior Court overruling defendant's demurrer to plaintiff's fourth amended com-

plaint and enter an Order sustaining such demurrer without leave to amend and dismissing the action against defendant.

ISSUE NO. 1:

HAS PLAINTIFF FAILED TO COMPLY WITH THE REQUIREMENTS OF THE CALIFORNIA TORT CLAIMS ACT SO AS TO BAR ANY CAUSE OF ACTION FOR VIOLATION OF A MANDATORY DUTY?

To state a cause of action against the defendant, the plaintiff must establish that he has complied with the requirements of the California Tort Claims Act (Govt. Code § 810, et seq.). The plaintiff has the burden of pleading and proving compliance with the claims presentation provisions, including that the claims presentation requirements were timely complied with. *Hall v. City of Los Angeles,* 19 Cal.2d 198, 201 (1941); *C.A. Magistretti Co. v. Merced Irrigation District,* 27 Cal.App.3d 270, 274 (1972).

Timely presentation of a written claim, when required by law, is a prerequisite to maintaining a cause of action against a public entity. Govt. Code § 945.4, 946.6 and 900 *et seq.; Ruffino v. City of Los Angeles,* 226 Cal.App.2d 67, (1964); *County of San Luis Obispo v. Ranchita Cattle Company* 16 Cal.App.3d 383 (1971).

Pursuant to Govt. Code § 911.2, a claim relating to a cause of action for death or injury to a person must be presented not later than six months after the accrual of the cause of action.

Plaintiff in this action was required to comply with the provisions of the Tort Claims Act and plead such compliance in his complaint. The incident which this lawsuit was based upon occurred on May 8, 1990 (Fourth Amended Complaint, Paragraphs 11 and 35) and plaintiff did not file his claim with the Board of Supervisors until "May 22,

1991" (Fourth Amended Complaint, Paragraph 33) which is over one year after the accrual of the cause of action. Even if the date of the Commission action (9/5/90) be deemed the date plaintiff's cause of action accrued plaintiff's claim was untimely per this Court's prior ruling of January 29, 1993.

Furthermore, plaintiff failed to timely apply for leave to present a late claim pursuant to Govt. Code § 911.4 and has failed to petition the court for an Order relieving plaintiff from the provisions of Govt. Code § 945.4 pursuant to Govt. Code § 946.6. Therefore, plaintiff's failure to allege compliance with the claims requirement of the California Tort Claims Act precludes plaintiff from suing Defendant under state tort law, even if plaintiff could otherwise state a cause of action.[1]

From the face of the claim, of which the Court was requested to take judicial notice on March 12, 1993, it is clear that the claim is based on the denial of plaintiff's request for hearing by the C.S.C.. It is not against the County's actions of May 8, 1990. The C.S.C. is an autonomous quasi-judicial administrative body independent of the County. *(Department of Health Services v. Kennedy,* 163 Cal.App.3d 792, 802 (1984). A claim based on its actions cannot be a claim against the County's actions in administering the examination, which would clearly be untimely. Moreover, it is plaintiff's obligation to clearly plead compliance with the Tort Claims Act, and the fourth amended complaint, if anything, states facts which establish the contrary (see paragraphs 11 and 33).

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[1] In its Minute Order of March 15, 1993, the Court opined that the question of timeliness and its waiver should be an affirmative defense. We respectfully disagree since all the facts required the decide to issue are before the Court.

Finally, the allegations of the claim must be consistent with the allegations and legal theories of the complaint. *Donahue v. State of California,* 178 Cal.App.3d 796, 803 (1986); *Fall River Joint Unified School District v. Superior Court,* 206 Cal.App.3d 431, 435 (1988). A comparison between the claim and the complaint reveals that the claim alleges acts by the Defendant (District Attorney's office) and by the C.S.C. which is *not* Defendant. Only Defendant is named in the fourth amended complaint, *not* the C.S.C. Only the acts by the C.S.C. are within the 6 month period within which the claim must be filed. Therefore, plaintiff's claim is untimely as to the acts alleged against Defendant. Nevertheless, it was appropriately denied, as opposed to being designated as untimely, since the acts alleged against the C.S.C. were timely but were not the basis for liability against Defendant County.

ISSUE NO, 2:

HAS PLAINTIFF FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES SO AS TO DEPRIVE THE COURT BELOW OF JURISDICTION?

In *City of Fresno v. Superior Court,* 188 Cal.App.3d 1484, (1987) the Court of Appeal issued a writ of mandate directing the superior court to enter summary judgment on behalf of the City on the grounds that plaintiff had failed to exhaust his administrative remedies by dismissing his writ of mandate proceeding after the Civil Service Board had denied his appeal alleging wrongful termination. The Court held that such failure to exhaust administrative remedies was a jurisdictional, not procedural defect. The Court found the administrative remedies to be adequate despite the fact that no damages were allowed since the tort causes of action were necessarily based on the assertion that plaintiff's removal was improper.

Similarly, in the instant case, plaintiff's allegations that his interview was willfully and negligently administered in contravention of Civil Service Rules and, thus, he is entitled to damages, necessarily relies upon a determination that the interview did violate Civil Service Rules. No such finding was made. In fact, the C.S.C. determined that plaintiff was *not* entitled to an evidentiary hearing based upon the facts alleged in his appeal, which are the same facts alleged in his civil complaint and seek the same remedy (i.e, increase of his interview score).

The ruling of the C.S.C. was tantamount to sustaining a demurrer without leave to amend and dismissal. In such circumstances, plaintiff must appeal. After denial of a hearing by the C.S.C., plaintiff must seek a writ of mandate. He failed to do so. Allowing the current fourth amended complaint to proceed would violate the doctrine of exhaustion of administrative remedies.

Nor does the fact that the Civil Service Commission denied plaintiff a hearing excuse him from exhausting his administrative remedies. In *Morton v. Hollywood Park,* 73 Cal.App.3d 248, 254, 139 Cal.Rptr. 584 (1977), the Court of Appeal unequivocally established that failure to compel a hearing is failure to exhaust administrative remedies.

Based upon the undisputed facts and controlling authority plaintiff is barred from stating any cause of action against Defendant for failure to timely and properly comply with the Tort Claims Act, and the Court below was deprived of jurisdiction to consider any cause of action based on alleged improprieties in the administering of the examination by plaintiffs failure to exhaust administrative remedies.

WHEREFORE, Defendant respectfully prays that:

1. A Peremptory Writ of Mandate/Prohibition immediately issue under the seal of this Court commanding Respondent to vacate its Order overruling Defendant's

demurrer and issue an Order sustaining Defendant's demurrer without leave to amend and dismissing defendant from this action, or to show cause before this Court at a time and place then and there specified by Court Order why it has not done so and why a Peremptory Writ of Mandate/Prohibition should not immediately issue; and

2. After hearing on this Petition, this Court immediately issue a Peremptory Writ of Mandate/Prohibition commanding Respondent to vacate its Order overruling Defendant's demurrer and issue an Order sustaining Defendant's demurrer without leave to amend and dismissing Defendant from this action; and

3. Defendant be awarded costs of this action; and

4. Other relief be granted as the Court deems just and proper.

DATED: June 30, 1993

Respectfully submitted,

DE WITT W. CLINTON
County Counsel

By: ALAN K. TERAKAWA
ALAN K. TERAKAWA
Principal Deputy County Counsel

Attorneys for Defendant
COUNTY OF LOS ANGELES

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

COUNTY OF LOS ANGELES,
Petitioner,

v.

THE SUPERIOR COURT
OF LOS ANGELES COUNTY,
Respondent,

EMILLE V. DECUIR,
Real Party in Interest.

No. B076507
(Super. Ct. No. BC052064)
(Loren Miller, Jr., Judge)

ORDER

COURT OF APPEAL
SECOND DISTRICT
FILED
AUG 31, 1993
JOSEPH A. LANE, Clerk
F.G. STAPLETON, JR., Deputy Clerk

THE COURT:*

The petition for writ of prohibition and/or mandamus filed July 1, 1993, has been read and considered and is denied for the absence of facts showing entitlement to extraordinary relief.

*WOODS (A.), P.J., EPSTEIN, J., VOGEL (C.S.), J.

DEPT. 84

BC 052 064

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

Date: July 17, 1992

Honorable RICHARD A. PAEZ, Judge
NONE, Deputy Sheriff
NONE, Court Attendant
J. SWEET, Deputy Clerk
NONE, Reporter
NONE, E/R Monitor
35.

(Parties and Counsel checked if present)

EMILLE V. DECUIR, PRO SE
Counsel For Plaintiff

VS.

COUNTY OF LOS ANGELES, et al.,
Counsel For Defendant

NATURE OF PROCEEDINGS:

DEMURRER OF DEFENDANT COUNTY OF LOS ANGELES TO COMPLAINT;

In this matter heretofore ordered to stand submitted on July 15, 1992 the court now rules as follows:

Upon further consideration defendant's demurrer is sustained with 20 days leave to amend. Defendant to then have 20 days to respond.

The County is not correct when it contends that plaintiff must file a Code of Civil Procedure § 1094.5 writ of mandate as part of his obligation to exhaust his administrative remedies. § 1094.5 is only available when there is a right to a "hearing." Here, plaintiff had no such right; it was discretionary with the Civil Service Commission.

The demurrer is sustained because plaintiff has failed to set forth adequately the mandatory duty violated by defendant's employees. Defendant may be liable under Government Code § 815.6. See Van Alstyne, Cal. Govt. Tort Liability Practice, §§ 2.41 through 2.48. Other than the reference to the regulation affording plaintiff a veterans credit, plaintiff sets forth no other enactment which sets forth any other mandatory duty.

Finally, the fact that plaintiff may have a right of action under Code of Civil Procedure § 1085 does not preclude this action for damages.

A copy of the within minute order is sent this date via United States Mail to counsel at the following addresses:

GARY GOLDBERG
1033 Fernrest Drive
Harbor City, CA 90710

ALAN TERAKAWA
500 W. Temple St., S. 653
Los Angeles, CA 90012

DEPT. 83

BC052064

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

Date: March 15, 1993

Honorable CARY H. NISHIMOTO, Judge
, Deputy Sheriff
, Court Liaison

J. SWEET, Deputy Clerk
, Reporter
NONE, E/R Monitor
21.
(Parties and Counsel checked if present)

EMILLE V. DECUIR, PRO SE
Counsel For Plaintiff

vs.

COUNTY OF LOS ANGELES, et al.,

Counsel For Defendant

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER:

DEMURRER OF DEFENDANT COUNTY OF LOS ANGELES TO THIRD AMENDED COMPLAINT;

In this matter heretofore taken under submission on March 12, 1993, the court finds and orders as set forth hereinbelow.

The third amended complaint alleges that plaintiff is entitled to a fair hearing within the parameters set out in the

civil service regulations governing interviews conducted as part of the pre employment application process. Plaintiff further alleges that the interview was unfairly scored and manipulated to conform to a predetermined rating i.e. after scoring his examination & interview, it was discovered that plaintiff was entitled to veteran's credit of 10 additional points but that in re-computing his score, the veteran's points were added but the examination/interview score was lowered resulting in the same score; that the original score, had it been computed fairly following the examination, would have placed plaintiff within the range of eligible applicants assured of employment rather than those in the lower band who were either summarily ineligible or unlikely to gain employment. The amended pleading alleges the request for a Civil Service hearing which initially resulted in an order by the Civil Service Commission for a second interview. It is alleged that the second interview was unfair in that it included retesting over matters for which there was no dispute. While awaiting yet a third interview which the District Attorney's office apparently reset on its own initiative, the Civil Service Commission set a date to hear plaintiff's application for an evidentiary civil service hearing. Although it is not alleged in the amended pleading, plaintiff urges at the hearing on this demurrer that the Civil Service Commission had the authority to provide plaintiff with complete relief i.e. to put him in the higher band eligibility list after reinstating the points which he claims were unfairly deleted, but concedes as he has in prior pleadings and hearing on demurrer that he has no right to such a formal hearing. It is unknown whether the Civil Service Commission had such authority and if not, the relief sought is illusory.

Notwithstanding the foregoing, permissible inferences from the allegations include the following: that plaintiff did not submit to the third interview because he could not reasonably rely on a fair interview considering the history of

the first two interviews; that granting the second interview was not the relief sought by plaintiff but was only an interim order not intended to resolve the specific issues raised by plaintiff; that the normal civil service rules requiring a writ did not apply to plaintiff because he was not an employee of the District Attorney's Office and hence stood in the same stead as a non-county employee applicant; that notwithstanding the fact that plaintiff was not entitled as a matter of right to have such an evidentiary hearing before the Civil Service Commission, he was not precluded from seeking such relief as part of the administrative remedies available to him; that had he not requested the formal hearing, he would not have exhausted his administrative remedies; that the final act necessary to exhaust those available administrative remedies was the denial of such hearing. As to the Tort Claims Act, it appears pursuant to Government Code Section 911.3 that the Legislature intended the public entity provide within 45 days of the receipt of a late claim, notice to those filing a late claim of the specific deficiency and that failure to do so constitutes a waiver. At this stage, any question of the timeliness of the claim is properly set forth as an affirmative defense and later a summary judgment if appropriate. Further, the court finds that the civil service regulations which provide for a fair and impartial interview process impose mandatory duties on the County which said duties are alleged to have been violated. Clearly, plaintiff was an applicant for a civil service job and thus within the class of persons for whose protection such enactments were adopted.

However, because the foregoing allegations are based on the assumption that the Civil Service Commission had the authority to grant plaintiff complete relief but does not allege same, the demurrer is sustained within 30 days to amend. Plaintiff is to give notice.

Copies of the within minute order are sent this date via United States Mail to plaintiff and counsel in sealed envelopes addressed as follows:

EMILLE V. DECUIR
16278 Bright Morning Court
Riverside, CA 92503

DE WITT W. CLINTON, County Counsel
ALAN K. TERAKAWA, Principal Deputy County Counsel
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012-2713

GARY GOLDBERG, ESQ. BAR #156054
Law Offices of Gary Goldberg
1033 Fernrest Drive
Harbor City, California 90710
(310) 530-5297

Attorney for Plaintiff
EMILLE V. DECUIR

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

EMILLE V. DECUIR,
Plaintiff,

vs.

COUNTY OF LOS ANGELES
DOE 1, DOE 2, DOE 3, DOE 4, AND DOE 5,
Defendants.

CASE NO. BC052064

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEMURRER TO COMPLAINT

DATE: July 15, 1992
TIME: 8:30 a.m.
Dept: "84"

MOTION CUTOFF DATE: None
DISC. CUTOFF DATE: None
TRIAL DATE: None

TO ARE PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

Plaintiff, Emille V. DeCuir, submits the following Memorandum of Points and Authorities in Opposition to Demurrer to Complaint.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Emille DeCuir could sustain irreparable harm as a result of the manipulation of his civil service exam scores, which has rendered him unable to secure the position of Investigator, D.A.

The county of Los Angeles' Demurrer must be denied for the foregoing reasons:

(a) The County is liable under the theory of respondeat superior;

(b) The County has a mandatory duty to protect plaintiff, and the class (civil service examinees) he represents, from the type of injury suffered;

(c) Plaintiff has complied with the Doctrine of exhaustion of administrative remedies with in that:

(1) Plaintiff has exhausted all available remedies;

(2) A § 1094.5 administrative writ was not appropriate in this case because a hearing was not required by law; and

(3) The County never afforded Emille his due process right of notice of available administrative remedies when it denied his request for a hearing.

II.

STATUS OF PROCEEDINGS

On or about June 11, 1990, plaintiff appealed his final score to the Chief Administrative Office of defendant COUNTY. The appeal was denied on June 26, 1990.

III.

PLAINTIFF WAS NOT GIVEN NOTICE OF WHAT PROCEDURE TO TAKE WHEN HIS REQUEST FOR A HEARING WAS DENIED BY THE COMMISSION.

Plaintiff was given notice of the Civil Service Commission decision of January 30, 1991 denying his request for a hearing, but the notice did not notify him of the next appropriate step to seeking a remedy. The notice provided that "only one amended appeal could be filed with the Civil Service Commission." Said notice failed to mention Code of Civil Procedure § 1094.6 which informs plaintiff that he has ninety days to file a § 1094.5 writ of mandamus or any other procedure that would be appropriate when a hearing is denied.

Plaintiff requests the court to take judicial notice of the fact that when the Commission actually rules upon a case, it provides the aggrieved party with notice that to proceed further, they must file a writ of mandate under § 1094.5. No such notice is given to a party who requests a hearing by the Commission which is subsequently denied.

APPENDIX C

APPENDIX C-1

CAREER OPPORTUNITIES
LOS ANGELES COUNTY DISTRICT ATTORNEY
AN ACTIVE EQUAL OPPORTUNITY EMPLOYER

All positions are open to qualified men and women. Pursuant to section 504 of the Rehabilitation Act of 1973 as amended, handicapped persons who believe they need reasonable accommodation or help in order to apply for or perform the necessary duties of a position may contact Coordinator of Personnel Services for disabled persons at (213) 974-2779. Deaf applicants with telephone-teletype equipment may leave typewritten messages by calling (213) 824-0010.

BULLETIN NO. 120

BULLETIN POSTED: 3/12/90

Applications must be submitted on business days ONLY beginning Monday, March 12, 1990 between the hours of 8:00 a.m. and 5:00 p.m., to the District Attorney's Personnel Office, Hall of Records, 320 West Temple Street, Room 560, Los Angeles, California 90012. This examination will remain open until the needs of the department are met.

INVESTIGATOR, DA

EXAM NO. 1-2889-E

SALARY: $2,668.00 – $3,305.00
$2,815.00 – $3,305.00 (A.A. Degree)
$2,969.00 – $3,305.00 (B.A./B.S. Degree)

plus P.O.S.T. incentives for Basis, Intermediate, and Advanced certificates.

MINIMUM REQUIREMENTS: (1) Two years' law enforcement experience as a full-time paid peace officer as defined in Section 830.1 of the Penal Code of the State of California -AND- either a Bachelor's degree from an accredited college, or an Associate in Arts degree from an accredited college with specialization in administration of justice, criminology, or police science and administration -OR- (2) A Bachelor's degree from an accredited college with specialization in administration of justice, criminology, or police science and administration.

— Candidates claiming veteran's credit must attach a copy of their honorable discharge or certificate of service (DD 214) to their application.

— Candidates who took this test October 25, 1989, are not eligible to compete again at this time. This is an eligible register, no person may compete for this examination more than once every six months.

CITIZENSHIP: An Investigator, DA for the County of Los Angeles must be a citizen of the United States at the time of appointment.

LICENSE: A California class "C" Driver's License. Appointees may be required to provide automobiles and drive them in the County service at the rate of compensation allowed by the Board of Supervisors.

AGE: At least 21 years of age and under 35 years at time of appointment unless applicant is already in the Los Angeles County Safety Member Retirement system.

EXAMINATION INFORMATION: This examination will consist of a qualifying written test and an interview weighted 100%. The written test will cover knowledge related to criminal law, procedure, evidence and techniques in investigation. Only those candidates receiving a score of 70% or higher on the written test will be invited to the interview. The interview will cover experience, training, personal fit-

ness, and general ability to perform the duties of the position and will include a test of writing ability. Candidates will be notified by mail of the date, time and place of the written examination.

ARTICLE IX.

CIVIL SERVICE

Sec. 30. Purpose of Civil Service System.[84]

The purpose of this article is to establish a Civil Service System for the classified service which shall provide County government with a productive, efficient, stable, and representative work force by:

(1) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills relevant to the work to be performed.

(2) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(3) Assuring fair treatment of applicants and employees in all aspects of personnel administration without discrimination based on political affiliation, race, color, national origin, sex, religious creed or handicap and with proper regard for their privacy and constitutional rights as citizens.

(4) Assuring that employees are protected against coercion for political purposes and are prohibited from using their official authority for the purpose of interfering with

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[84] *1948 Amendment. Amended by Stats. 1949, Resolution C. 9. P. 2880.*

1978 Amendment. Amended by Stats. 1978. Charter Chap. 29.

or affecting the result of an election or a nomination for office.

Sec. 31. Civil Service Commission.

The Civil Service Commission shall consist of five members appointed by the Board of Supervisors. Each member of the Commission shall be appointed for a four-year term and shall serve until a successor is appointed and qualified. The term of a Commissioner appointed prior to November 7, 1978, shall expire four years after appointment or on November 7, 1978, whichever is later. Any vacancy on the Commission shall be filled by the Board of Supervisors for a full four-year term beginning on the date of appointment. No member shall hold any other salaried County office, nor shall have been, within the year next preceding appointment, an active executive officer in any political organization. Each member shall be an elector of the County. The Board of Supervisors by a four-fifths vote of all the members may remove a member of the Commission during his or her term of office, but only upon stating in writing the reasons for such removal and allowing such member an opportunity to be publicly heard in his or her own defense.[85]

Sec. 32. Director of Personnel.

The Board of Supervisors shall appoint the Director of Personnel who shall under the general direction of the Board of Supervisors, administer the Civil Service system in accordance with the provisions of this Charter and the Civil Service Rules. The Director of Personnel shall, under the

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[85] *1948 Amendment. Amended by Stats. 1949, Resolution C. 9, P. 2882.*

1966 Amendment. Amended by Stats. 1967. Resolution C. 6, P. 4339.

1974 Amendment. Amended by Stats. 1975. Resolution C. 135, P. 3842.

1978 Amendment. Amended by Stats. 1978. Charter Chap. 29.

direction of the Board of Supervisors, perform such other duties as may be prescribed by said Board pursuant to the provisions of Section 22¾ hereof. The Director of Personnel shall appoint all assistants, deputies, and other persons in the department.[86]

Sec. 33. The Civil Service of the County is hereby divided into the unclassified and the classified service.[87]

The unclassified service shall comprise:

(a) All officers elected by the people.

(b) Members of all commissions, committees and boards created by this Charter, statute or ordinance.

(c) All heads of County agencies and departments.[88]

(d) In the office of the District Attorney: The Chief and one other deputy, Bureau Chiefs, Assistant Bureau Chiefs, Administrative Deputy-District Attorney; Chief Field Deputy, three Special Assistants, one secretary, and three detectives; and special counsel and special detectives for temporary employment.

(e) In the office of the Sheriff: The Undersheriff, or Chief Deputy, one Executive Assistant, one Executive Secretary, three Field Deputies, two Assistant Sheriffs, and eight Division Chiefs. In the office of the Assessor:

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[86] *1978 Amendment. Amended by Stats. 1978, Charter Chap. 29.*

[87] *1948 Amendment. Amended by Stats. 1949, Resolution C. 9, P.2882.*

1976 Amendment. Amended by Stats. 1976, Appendix C. 13, P.32.

1978 Amendment. Amended by Stats. 1978, Charter Chap. 29.

In Placer County Employees Association v. Board of Supervisors, 233 Cal.App.(2d) 555, at 558, 43 Cal.Rptr.782 (1965) the court discusses the reasons for exempt or unclassified positions.

[88] *County Counsel has opined that the Director of Public Social Services remains in the classified service, August 31, 1976.*

The Chief Deputy, one Assistant Assessor, one Executive Secretary, three Special Assistants, and four Directors.

(f) Superintendents, principals and teachers in the school system.

(g) All officers and other persons serving the County without compensation.

(h) In the office of each Supervisor: All Deputies. Some or all of these Deputies may by ordinance be given a job title other than Deputy.[89]

The classified service shall include all other positions now existing or hereafter created.

Sec. 33.5 Notwithstanding any other provision of this Charter, any person employed as a County department head on the effective date of this section and whose position as department head is removed from the classified service on said date and placed in the unclassified service, shall continue to have the same rights as if his position had not been placed in the unclassified service.[90]

Sec. 33.5(a) Notwithstanding any other provision of this Charter, any person employed as an Executive Assistant, Executive Secretary, Field Deputy, Division Chief, Assistant Sheriff, in the office of the Sheriff, or as an Assistant Assessor, Executive Secretary, Special Assistant, or Director in the office of the Assessor, or as a Bureau Chief, Assistant Bureau Chief, Administrative Deputy District Attorney or Chief Field Deputy in the office of the District Attorney on the effective date of this section shall remain in the classified service for so long as he holds the position that he held on the effective date of this section.[91]

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[89] *1978 Addition. Added by Stats. 1978, Charter Chap. 29.*

[90] *1976 Addition. Added by Stats. 1976, Appendix C, 13, P. 32.*

[91] *1978 Addition. Added by Stats. 1978, Charter Chap. 29.*

Any other provision of this Charter notwithstanding, a vacancy in the position of Assistant Sheriff shall be filled without examination or creation of an eligibility list by appointment from among sworn personnel holding a current permanent appointment as an Inspector or higher position in the classified service in the office of the Sheriff.

Any other provision of this Charter notwithstanding, a vacancy in the position of Division Chief shall be filled without examination or creation of an eligibility list by appointment from among sworn personnel holding a current permanent appointment as a Captain or a higher position in the classified service in the office of the Sheriff.

Any other provision of this Charter notwithstanding, a vacancy in the position of the Assistant Assessor or Director shall be filled without examination or creation of an eligibility list by appointment from among those persons holding a current permanent appointment in the classified service in the office of the Assessor.

Any other provision of this Charter notwithstanding, a vacancy in the position of Bureau Chief and Assistant Bureau Chief shall be filled without examination or creation of an eligibility list by appointment from among those persons holding a current permanent appointment as a Deputy District Attorney Grade IV or higher attorney position in the classified service in the office of the District Attorney.

Any other provision of this Charter notwithstanding, a vacancy in the position of Administrative Deputy District Attorney shall be filled without examination or creation of an eligibility list by appointment from among those persons holding a permanent appointment to a classified position under this Charter.

Sec. 33.6 In the event that a member of the classified service is appointed to an unclassified position, he shall have

the right to take a leave of absence from his position in the classified service while holding such appointment and, upon the termination of such appointment, to return to the status in the classified service which he held at the time of his appointment.[92]

Sec. 33.7. Repealed.[93]

Sec. 33.8. Notwithstanding any other provision of this Charter, any person employed as a Supervisor's Deputy on the effective date of this section and whose position as Supervisor's Deputy is removed from the classified service on said date and placed in the unclassified service, shall continue to have the same rights as if his position had not been placed in the unclassified service.[94]

Sec. 34. Functions of the Commission.

The Civil Service Commission shall serve as an appellate body in accordance with the provisions of Sections 35(4) and 35(6) of this article and as provided in the Civil Service Rules.

The Commission shall propose and, after a public hearing, adopt and amend rules to govern its own proceedings.

In any hearing conducted by the Commission or by a hearing officer appointed by the Commission, the Commission or the hearing officer shall have the power to subpoena and require the attendance of witnesses and the production thereby of books and papers pertinent to the hearing and each Commissioner or hearing officer shall have the power to administer oaths to such witnesses.[95]

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[92]*1976 Addition. Added by Stats. 1976, Appendix C. 13, p. 32.*

[93]*Repealed by Stats. 1978, Charter Chapter 29.*

[94]*1978 Addition. Added by Stats. 1978, Charter Chap. 29.*

[95]*1940 Amendment. Amended by Stats. 1941, Resolution Ch. 2, PP. 3235 and 3236.*

Sec. 35. Civil Service Rules.

Rules of the Civil Servic System shall be adopted by the Board of Supervisors only after a public hearing.

Rules of the Civil Service System shall provide for:

(1) Establishment and maintenance of a classification plan and the classification of all positions which are included in the system.

(2) Recruitment of persons to fill positions, either on an open or promotional basis, evaluation of qualifications of applicants, the establishment and maintenance of lists of qualified persons ranked according to their relative qualifications to hold designated positions, and certification of such lists to appointing powers. Appointments from lists may be made on a permanent, temporary, or recurrent basis. In the absence of an appropriate list, where the Director of Personnel finds an emergency exists, emergency appointments may be made. Such appointments may not exceed 90 days and may not be extended. Appointments to permanent positions shall be final only after the completion of a probationary period.

(3) Establishment of County-wide policies and systems for the evaluation of employee performance and for employee development.

(4) Procedures for appeal of allegations of political discrimination and of discrimination based on race, sex,

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1946 Amendment. Amended by Stats. 1947, Resolution C. 11, P. 3361.

1948 Amendment. Amended by Stats. 1949, Resolution C. 9, P. 2880.

1954 Amendment. Amended by Stats. 1955, Resolution C. 20, P. 3788.

1972 Amendment. Amended by Stats. 1972, Resolution C. 166, P. 3467.

1978 Amendment. Amended by Stats. 1978, Resolution Chap. 29.

color, national origin, religious opinions or affiliations or handicap made by County employees, regardless of status, and by applicants for employment.

(5) Procedures for layoff or reduction in lieu of layoff by the appointing power for reasons of economy or lack of work.

(6) Civil Service Commission hearings on appeals of discharges and reductions of permanent employees.

(7) Transfer and promotion of employees between County departments and districts participating in the Civil Service System and governed ex-officio by the Board of Supervisors.

Existing Civil Service Rules will remain in effect until such time as revisions are adopted by the Board of Supervisors.[96]

Sec. 36. Certification of Payroll.

The Auditor shall not approve any salary or compensation for services to any person holding or performing the duties of a position in the classified service, unless the payroll account for such salary or compensation shall bear the certificate of the Director of Personnel that the persons named therein have been appointed or employed in accordance with the provisions of this article and the rules established thereunder. [97]

Sec. 36½. In all open competitive examinations held pursuant to this Charter, the Civil Service Commission shall, in addition to all other credits, give a credit of ten percent of the total credits specified for such examination to all persons passing the examination who have, or who shall

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[96] *1978 Amendment. Amended by Stats. 1978, Charter Chap. 29.*

[97] *1996 Amendment. Amended by Stats. 1967, Resolution C. 6, P.4339. 1978 Amendment. Amended by Stats. 1978, Charter Chap. 29.*

have, served in the armed forces of the United States in time of war, armed insurrection or international police action and are honorably discharged, or whose service was honorable, and also to the wife of any such person who while engaged in such service in time of war, armed insurrection or international police action was wounded, disabled or crippled and thereby permanently prevented from engaging in any remunerative occupation, and also to the widow of any such person who died or was killed while in such service.[98]

Sec. 37. Repealed.[99]

Sec. 38. Repealed.[100]

Sec. 39. Repealed.[101]

Sec. 40. Repealed.[102]

Sec. 41. No person in the classified service, or seeking admission thereto, shall be appointed, reduced or removed or in any way favored or discriminated against because of race, color, national origin, political or religious opinions or affiliations.[103]

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[98]*1954 Amendment. Amended by Stats. 1955, Resolution C. 20, P.3788.*

[99]*Repealed by Stats. 1978, Charter Chap. 29.*

[100]*Repealed by Stats. 1978, Charter Chap. 29.*

[101]*Repealed by Stats. 1978, Charter Chap. 29.*

[102]*Repealed by Stats. 1978, Charter Chap. 29.*

[103]*1958 Amendment. Amended by Stats. 1959, Resolution C. 7, P.5344.*

County officers have the right to appoint deputies and employees except as limited by the charter. There are two limitations: (1) appointments must be made from a list of three persons certified by the Civil Service Commission (Sec. 34. subsec. 6); and (2) no appointment is to be based upon religious or political opinions or affiliations (Sec. 41). The officer is limited in his power to discharge in that the discharge may

Sec. 42. Repealed.

Sec. 43. Repealed.

Sec. 44. Any person wilfully violating any of the provisions of this article, or of the rules established hereunder, shall be guilty of a misdemeanor.

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not be based upon an employee's political or religious opinion or affiliation, and the officer must present the deputy or employee with the reason for his discharge and give him a reasonable time to reply thereto. No hearing was required by the charter when this case was decided. Cronin v. Civil Service Commission, 71 Cal.App. 633, 236 P.339 (1925).

Neither this provision nor the state or federal Constitutions, however, prevent the Board of Supervisors from investigating the character, antecedents, the viewpoints and affiliations of its employees, and it may demand of each employee an oath of allegiance to the federal and state Constitutions and the laws of California as against all enemies of the United States and the state, and an affidavit that he does not advocate the overthrow of the government by force, or is not a member of organizations that advocate such overthrow; refusal to give such oath and affidavit is a proper basis for discharge. Steiner v. Derby, 88 Cal.App. (2d) 481, 199 P. (2d), 429 (1948); 338 U.S. 327, 94 L. Ed. 144, 70 S. Ct. 161 (1949). Note, however, Keyishian v. Board of Regents, 385 U.S. 589, 87 S. Ct. 675, 17 L. Ed. (2d) 629 (1967); and Elfbrands v. Russell, 384 U.S. 11, 86 S. Ct. 1238, 16 L. Ed. (2d), 321 (1966).

"Nothing is to be found in Section 41 intended to prevent an employer from discharging an employee who advocates the overthrow of our government."

"The section contains no inhibition against the county's discharging an employee whose first loyalty is to his ideal of armed revolution against the state that he serves. The fact that his tenure is protected by civil service does not avail him if he is disloyal."

"Section 41 refers to politics and religion in their narrow connotations and not to such a movement as champions the destruction of the government by violence." Hirschman v. Los Angeles County, 39 Cal. (2d) 698, 249 P. (2d) 287 (1952).

Section 1028.1 of the Government Code reads:

Sec. 44.5. Nothing in this Article shall prevent the leasing of County-owned real property when and as authorized by law.

Sec. 44.7. Nothing in this Article shall prevent the County, when the Board of Supervisors finds that work can more economically or feasibly be performed by independent

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1028.1. It shall be the duty of any public employee who may be subpoenaed or ordered by the governing body of the state or local agency by which such employee is employed, to appear before such governing body, or a committee or subcommittee thereof, or by a duly authorized committee of the Congress of the United States or of the Legislature of this State, or any subcommittee of any such committee, to appear before such committee or subcommittee, and to answer under oath a question or questions propounded by such governing body, committee or subcommittee, or a member or counsel thereof, relating to:

(a) Present personal advocacy by the employee of the forceful or violent overthrow of the Government of the United States or of any state.

(b) Present knowing membership in any organization now advocating the forceful or violent overthrow of the Government of the United States or of any state.

(c) Past knowing membership at any time since October 3, 1945, in any organization which, to the knowledge of such employee, during the time of the employee's membership, advocated the forceful or violent overthrow of the Government of the United States or of any state.

(d) Questions as to present knowing membership of such employee in the Communist Party or as to past knowing membership in the Communist Party at any time since October 3, 1945.

(e) Present personal advocacy by the employee of the support of a foreign government against the United States in the event of hostilities between said foreign government and the United States.

Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such questions so propounded shall be guilty of insubordination and guilty of violating this section and shall be suspended and dismissed from his employment in the manner provided by law.

contractors, from entering into contracts for the performance of such work. The Board of Supervisors shall adopt an ordinance specifying criteria for entering into contracts, and specifying competitive bidding procedures for the award of such contracts.

Rule 4

HEARINGS

Rules:

4.01 Right to petition for a hearing.
4.02 Petition for hearing.
4.03 Action on petition for hearing.
4.05 Time within which petition must be filed.
4.06 Hearing board or officer.
4.07 Rights of petitioner.
4.08 Appearance of petitioner.
4.09 Closing briefs.
4.10 Evidence.
4.11 Testimony of petitioner.
4.12 Burden of proof.
4.13 Findings and decisions.
4.14 Petitioner for judicial review.
4.15 Report of hearings.
4.16 Transcripts of hearings.
4.17 Pre-hearing conference.
4.18 Waiver of hearing.
4.19 Commission rules.

4.01 *Right to petition for a hearing.* Any employee or applicant for employment may petition for a hearing before the commission who is:

A. Adversely affected by any action or decision of the director of personnel concerning which discrimination is alleged as provided in Rule 25;

B. Adversely affected by any action or decision of the commission made without notice to and opportunity for such person to be heard other than a commission decision denying a petition for hearing;

C. Otherwise entitled to a hearing under the Charter or these Rules. (Ord. 88-0020 § 1 (part), 1988.)

4.02 *Petition for hearing.* Such petition shall be in writing, signed by the petitioner, or the petitioner's representative, and shall give the signer's mailing address and specify the ruling or action appealed and in plain language and in detail sufficient facts and reasons upon which the petitioner's case is based. (Ord. 88-0020 § 1 (part), 1988; amended by Board Order No. 80 (part), 9/1/87.)

4.03 *Action on petition for hearing.*

A. In cases of discharge or reduction of a permanent employee other than a probationary employee covered by the provisions of Rule 18, or suspension in excess of five days, a timely petition for hearing shall be granted if it states sufficient specific facts and reasons in support of the employee's appeal as provided in Rule 18.02. The petition shall be denied if such facts and reasons are not stated.

B. In all other cases provided for in Rule 4.01, the commission may, at its discretion, grant a hearing or make its decision on the merits based on a review of written materials submitted by the parties concerned. The commission shall deny both a request for a hearing and a review of written materials if the petition fails to state sufficient specific facts and reasons, or if, in the opinion of the commission, the specific facts and reasons stated, if true, would not entitle the petitioner to any relief. Moreover, no hearing need be granted if the commission is of the opinion, based on the moving papers and any responses thereto, that the petitioner is not likely to prevail on the merits of the petition. No amended petition shall be considered if it is not

filed within 10 business days of the date of denial of the original petition. No more than one amended petition may be filed by the petitioner.

C. When granting a hearing, the commission shall state the specific issue(s) in the petition to be heard and will notify all the parties in writing of the issue(s). No other issues shall be heard.

D. The commission shall give written notice to the petitioning party and the representative of record and the department of the date, place and time of the commission meeting at which the petition shall be considered. Each petitioning party and the department shall have the responsibility of serving the documents on which they rely on the opposing party. If either party does not serve the documents on the opposing party, the commission shall, at the request of the party not served, continue the matter for two weeks for immediate service of said documents and the opposing party's right to respond to the "new" documents before considering the entire petition on its merits. In cases of discharge, reduction and, when appropriate, suspensions, such continuance if caused by the petitioner's failure to serve documents shall require a waiver of salary by the petitioner for a period of time equivalent to the length of time of the continuance. (Ord. 88-0020 § 1 (part), 1988: amended by Board Order No. 80 (part), 9/1/87.)

4.05 *Time within which petition must be filed.*

A. Unless otherwise provided in these Rules, a petition for hearing before the commission must be filed within the following time limits:

1. In a discharge, reduction or suspension over five days within 15 business days after service of letter of discharge, reduction or suspension of over five days;

2. In all other matters except as provided in Rule 6.07, not later than 10 business days after the ruling or order complained of.

B. Commission may extend the time limits for filing a petition only after consideration of a showing of good cause for the delay which has been submitted in writing. If the commission extends the time limits, the commission shall specify the facts which the commission deems to constitute good cause. The filing of a departmental grievance or an appeal in another jurisdiction, such as the Employee Relations Commission, shall not constitute good cause for extending the time limits for filing a petition with the commission. (Ord. 88-0020 § 1 (part), 1988: amended by the Board Order No. 80 (part), 9/1/87.)

4.06 *Hearing board or officer.* On granting a petition for hearing, the president of the commission shall assign it either to one or more hearing officers. (Ord. 88-0020 § 1 (part), 1988.)

4.07 *Rights of petitioner.*

A. When a hearing is granted, the petitioner shall attend, unless excused by the commission, or by the hearing board, and shall be entitled to:

1. Be represented by counsel or by a representative;

2. Testify under oath or affirmation;

3. Subpoena witnesses;

4. Cross-examine witnesses;

5. Cross-examine all employees of the commission or of the director of personnel who have investigated any of the matters involved in the case and whose reports are offered in evidence before the commission or hearing board;

6. Impeach any witness before the commission or hearing board;

7. Present such affidavits, exhibits, and other evidence as the commission or hearing board deems pertinent to the inquiry;

8. Argue the case.

B. The appointing power, the director of personnel or other members of the commission staff, and any other person whom the commission or hearing board finds to be interested in the matter shall be entitled to the same privileges. (Ord. 88-0020 § 1 (part), 1988.)

4.08 *Appearance of petitioner.*

A. The appearance of the petitioner shall be required at all hearings except as otherwise provided herein:

1. The appearance of the petitioner shall not be required where the commission has determined, pursuant to Rule 4.03, that a decision on the petition shall be made after a review of written materials submitted by all parties concerned;

2. The commission or hearing board shall have discretion to consent to the absence of the petitioner upon a showing of good cause therefor.

B. Unexcused absence of the petitioner at such a hearing shall be deemed a withdrawal of the petition and consent to the action or ruling from which the appeal was taken. (Ord. 88-0020 § 1 (part), 1988.)

4.09 *Closing briefs.* If closing briefs are to be submitted in a hearing, they must be submitted within 10 business days from the last session of the hearing. Late submission shall not be accepted or considered by the hearing board. (Ord. 88-0020 § 1 (part), 1988.)

4.10 *Evidence.*

A. The hearing shall be formal, but need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence or objection in civil actions.

B. Hearsay evidence may be admitted for any purpose, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege and of official or judicial notice shall be effective to the same extent as in civil actions. Irrelevant and repetitious evidence shall be excluded. Oral evidence shall be taken only under oath or affirmation. (Ord. 88-0020 § 1 (part), 1988.)

4.11 *Testimony of petitioner.* In hearings on discharges, reductions or suspensions in excess of five days, the petitioning employee shall not be required to testify, but may be cross-examined as to any matter relevant to the hearing if the petitioner takes the stand voluntarily. In any other type of hearing the petitioner may be called and examined as if under cross-examination. (Ord. 88-0020 § 1 (part), 1988.)

4.12 *Burden of proof.* In hearings on discharges, reductions or suspensions in excess of five days, the burden of proof shall be on the appointing power, except that the burden of proving affirmative defenses shall be on the person asserting them; provided that such raising of an affirmative defense does not relieve the appointing authority of its responsibility to sustain its burden of proof. In all other types of hearings the burden of proof shall be on the petitioner. (Ord. 88-0020 § 1 (part), 1988: amended by Board Order No. 80 (part), 9/1/87.)

4.13 *Findings and decisions.*

A. If the hearing, as hereinbefore described, is not before the full commission, the hearing board shall, within 30 calendar days from the conclusion of the hearing, submit a written or oral report to the commission for its approval. If the commission accepts the findings of fact contained in such report, it need not read the record of the hearing. If the commission declines to accept such findings, it must read the record or hold a hearing de novo.

B. When the commission has reached a proposed decision, it shall notify each party of that decision. Either party may then request findings of fact and conclusions of law by filing a written request with the commission. If a party files no such request with the commission within 10 business days after being notified of the proposed decision, that party shall be deemed to have waived the right to findings of fact and conclusions of law.

C. If a party requests findings of fact and conclusions of law, the commission may either adopt the report of the hearing board as its proposed findings and conclusions, direct one of the parties to prepare proposed findings and conclusions, or draft its own findings and conclusions. Copies of the proposed findings or conclusions shall be served personally or by mail on each party. Where practicable, such service should be made within 15 days of the receipt of the request.

D. If either party files objections to the proposed findings and conclusions within the time specified above and the commission believes that the objections or parts thereof have validity, the commission shall amend the proposed findings and conclusions accordingly, and shall notify the parties that the amended findings and conclusions are a new proposed decision. Any party who has not previously filed objections shall have 10 business days from the date of the

notice of the new proposed decision to file objections to that decision. The commission shall then consider those objections, and notify the parties of its final decision.

E. If no party files objections to the proposed findings and conclusions within 10 business days after service, they shall constitute the final decision of the commission. (Ord. 88-0020 § 1 (part), 1988: amended by Board Order No. 80 (part), 9/1/87.)

4.14 *Petitioner for judicial review.*

A. The provisions of Section 1094.6 of the California Code of Civil Procedure shall be applicable to any petition for judicial review of a decision of the commission suspending, reducing or discharging an officer or employee.

B. Any such petition for judicial review shall be filed no later than the 90th day following the date the decision becomes final. (Ord. 88-0020 § 1 (part), 1988.)

4.15 *Report of hearings.* Hearings on discharges, reductions and suspensions in excess of five days shall be conducted with a stenographic reporter. The commission or hearing board may order that other hearings be reported when it deems it necessary or when some person interested in the hearing requests, at least one full business day before the day set for the hearing, that such hearing be reported and pays the cost of fee for such reporting as estimated by the commission. (Ord. 88-0020 § 1 (part), 1988.)

4.16 *Transcripts of hearings.* Transcripts of hearings shall be furnished to any person on payment of the cost of preparing such transcripts. When transcripts are provided by the employees of the civil service commission, the cost shall be determined by the auditor-controller. When transcripts are provided by an independent contractor the cost will be established by contrast between the Los Angeles County and the reporting company. The transcript of the hearing

shall be the official record of the hearing. (Ord. 88-0020 § 1 (part), 1988.)

4.17 *Pre-hearing conference.*

A. With respect to any matters set for hearing, both parties shall confer no later than 10 business days prior to the date for the hearing for the purpose of agreeing to a statement in writing setting forth the specific facts or contentions in issue. The facts or contentions in issue contained in the agreed statement must fall within the scope of the hearing, as defined by the commission in accordance with Rule 4.03C. The party having the burden of proof shall initiate the contact with the opposing party. The statement must be filed with the commission or hearing board not later than five business days prior to the hearing, and shall include an estimate of the time required for the hearing and a list of all witness intended to be called by both parties. The commission or hearing board may also require such additional matters in the written statement as it deems appropriate. The commission may issue such orders as are necessary to assure that both parties attend the pre-hearing conference and cooperate in preparation of the statement in writing. If either party does not attend the pre-hearing conference and participate in attempting the preparation of the statement in writing, the hearing board shall accept the statement of the other party as to the facts ad contentions in issue to the extent such statement conforms to the scope of the hearing as defined by the commission in accordance with Rule 4.03C.

B. If the parties fail to reach agreement, then each party must file a written statement with the hearing board. The hearing board or a member designated by the board shall resolve all disputes, and announce the resolution to the parties as the first term of business in the hearing. The issues heard and the evidence taken must fall within the scope agreed upon by the parties or announced by the hearing

board. Parties may object to proposed commission findings of fact and conclusions of law on the basis of the failure of the hearing board to comply with this Rule. When the commission finds such objections to be valid, it shall make appropriate amendments to the proposed findings and conclusions. (Ord. 88-0020 § 1 (part), 1988.)

4.18 *Waiver of hearing.* Should any party entitled to be heard by the commission, either as a matter of right or as a matter within the commission's discretion, have filed before filing with the commission a petition based on substantially the same facts before the employee relations commission or made, a charge based on substantially the same facts under an arbitration provision of any valid memorandum of understanding, that party shall be deemed to have waived the right or opportunity to be heard by the commission. As to any such matters, the civil service commission will give full faith and credit to final decisions of the employee relations commission and to any final decision of an arbitrator made pursuant to a valid memorandum of understanding. (Ord. 88-0020 § 1 (part), 1988.)

4.19 *Commission rules.* Pursuant to Charter Section 34, the civil service commission shall adopt and amend rules to govern its own proceedings, and cause such rules to be published and distributed to all county departments and districts and all certified organizations. In case of conflict between these Rules and rules adopted by the commission, the provisions of these Rules shall prevail. (Ord. 88-0020 § 1 (part), 1988; amended by Board Order No. 80 (part), 9/1/87).

Rule 7

COMPETITIVE EXAMINATIONS

Rules:

7.01 Ordering examinations.
7.02 Continuous or periodic examining programs.
7.03 Notice of examination.
7.04 Competitive examinations.
7.06 Types of examinations.
7.07 Character of examinations.
7.08 Method of testing.
7.09 Time and place of examinations.
7.10 Postponement or cancellation of examinations.
7.11 Late applicants.
7.12 Inability to appear.
7.13 Parts and weights.
7.14 Passing grades.
7.15 Veteran's credit.
7.16 Key-copy inspection.
7.17 Protests against key answers.
7.18 Promulgation and notification of test results.
7.19 Inspection of examination materials, rating standards and scoring key.
7.20 Protests against ratings to the director of personnel.
7.21 Correction of clerical errors.
7.22 Record of examination.
7.23 Record of oral examination.
7.24 Other records of examination.
7.25 Examination to be impartial.

7.01 *Ordering examinations.* The director of personnel shall order an examination whenever necessary. Such order shall specify the class or classes, or specialized position within a class, for which the examination is ordered. (Ord. 88-0020 § 1 (part), 1988.)

7.02 *Continuous or periodic examining programs.* Notwithstanding anything to the contrary in these Rules, a continuous or periodic examining program may be ordered and administered by the director of personnel for any class of positions to establish an eligible register for temporary or permanent appointments. Filing will be open, applications received, and the examinations administered in such a program according to the needs of county service. The names of qualified eligibles resulting from such examinations shall be entered on the eligible register, and certifications for appointments shall be made in the same manner as from any eligible list. Names of eligibles from successive examinations in the same program shall be entered on the eligible register for the class at the appropriate places as determined by final grades. Names may be withheld from certification or removed from such eligible registers in the same manner and for the same reasons as from any eligible list. Names shall be dropped from such eligible registers after remaining on the register for the period of time specified in the order or in the bulletin announcing the program. (Ord. 88-0020 § 1 (part), 1988.)

7.03 *Notice of examination.*

A. A written notice of each examination shall be posted prior to the opening of the filing period of the examination on the official county recruitment bulletin board in the department of personnel. For promotional examinations, a written notice of each examination shall be posted for at least 10 days prior to the examinations.

B. Additional notice, such as paid advertising or publicity, shall be given when the director of personnel deems it necessary in order to have a sufficient number of qualified applicants. (Ord. 88-0020 § 1 (part), 1988.)

7.04 *Competitive examinations.* Except as provided in Rule 8, all examinations shall be competitive. An examina-

tion shall be deemed to be competitive when applicants are tested and grouped as to their relative qualifications and abilities, or when a single applicant is scored against a fixed standard. (Ord. 88-0020 § 1 (part), 1988.)

7.06 *Types of examinations.*

A. It is county policy that vacancies will generally be filled from within. However, open competitive examinations may be held when it is in the best interest of the county as determined by the director of personnel and the appointing power. Promotional examinations may be interdepartmental (county-wide) or departmental (limited to the employees of a department) and may be further limited to employees of a particular organizational unit.

B. Additionally, competitive reclassification examinations may be given within six months of the reclassification of a position.

C. In general a sufficient number of interdepartmental promotional examinations shall be held:

1. So that capable employees in smaller departments or in small specialized divisions of departments will have a chance for promotion to similar work in larger departments or larger divisions of other departments;

2. So that capable employees in the larger departments may advance by taking positions of greater responsibility in smaller departments; and

3. So that minority group members, women, and the handicapped will have a chance for promotion to ensure equal employment opportunities in accordance with the County's Affirmative Action Program. (Ord. 88-0020 § 1 (part), 1988.)

7.07 *Character of examinations.* All competitive examinations shall consist of one or more parts designed to qualify and group applicants in terms of their relative fitness

to perform the duties of the class or position for which the examination was ordered. The relative weights of the parts of the examination shall be stated in the official announcement of the examination or announced prior to the time of the examination. (Ord. 88-0020 § 1 (part), 1988.)

7.08 *Method of testing.* The qualification and fitness of applicants shall be determined either individually or in a group or groups by one or more of the following methods:

A. Written tests;

B. Oral tests of knowledge or ability;

C. Interviews covering general qualifications, education, training or experience;

D. Performance tests;

E. Physical tests of strength, stamina, or dexterity;

F. Evaluation of education, training, experience, or other qualifications as shown by the application, or by other information submitted, or by the record;

G. Questionnaires submitted to references;

H. Any other appropriate measure of fitness. (Ord. 88-0020 § 1 (part), 1988.)

7.09 *Time and place of examinations.* Whenever applicants are required to appear for an examination, the time and place shall be designated in the official bulletin, or the applicants shall be notified in person, by mail or by telephone. The director of personnel, when the good of the service requires it, may have an examination given in more than one session or at more than one place, either within or outside the county of Los Angeles. (Ord. 88-0020 § 1 (part), 1988.)

7.10 *Postponement or cancellation of examinations.* The administration of an examination, or any part thereof,

may be postponed or cancelled at any time. Notice of such postponement or cancellation shall be posted on the recruitment bulletin board and mailed or telephoned to the applicants. In an emergency where time does not permit such notice, an examination may be postponed or cancelled or the place of examination changed by posting a notice on the recruitment bulletin board as soon as possible and in a conspicuous location at the place and time set for the examination. (Ord. 88-0020 § 1 (part), 1988.)

7.11 *Late applicants.* Whenever applicants are required to assemble for a test, no applicant will be admitted after the designated time except at the discretion of the director of personnel or the director's designee. (Ord. 88-0020 § 1 (part), 1988.)

7.12 *Inability to appear.* If an applicant is unable to appear at the time or place designated, the director of personnel may arrange to give the applicant the examination at another time or place if the director of personnel finds:

A. That substantial and sufficient reasons exist for the inability to appear;

B. That no fraud will be perpetrated; and

C. That no person taking the examination will be materially prejudiced or assisted in passing the examination by reason of such special privilege. (Ord. 88-0020 § 1 (part), 1988.)

7.13 *Parts and weights.*

A. Each examination shall embrace one or more parts to which percentage weights shall be assigned, which weights shall total 100 percent. Each part shall be graded separately. This grade shall be multiplied by the percentage weights assigned to such part, and the sum of the resulting products shall be called the "weighted average."

B. In open examinations, the points, if any, for veteran's credit shall be added to the weighted average, except that such credit shall not be added unless the weighted average totals 70 percent or more.

C. 1. Except as specified below, all promotional examinations shall include as part an appraisal of promotability, based on an evaluation of records and of efficiency and character in relation to the class or position for which the examination is being given. The weights of such evaluation, including consideration of seniority, efficiency and character, shall not exceed 50 percent of the total weights in the examination, except that for management positions the appraisal of promotability may be as high as 100 percent. The weight of the appraisal of promotability shall be determined by the director of personnel after consultation with the appointing power. "Management" shall be defined as those classifications that have the supervisory responsibility for first-line supervisors, and all classifications at the level of supervisor of first-line supervisors and above.

2. The appraisal of promotability may be excluded from the examination when it is deemed by the director of personnel to be in the best interest of the service. In the event that the appraisal of promotability is excluded from the examination process, then seniority, efficiency and character shall be evaluated by one or more of the methods enumerated in Rule 7.08. (Ord. 88-0020 § 1 (part), 1988.)

7.14 *Passing grades.*

A. Unless otherwise provided in the bulletin or other notice announcing the examination, a final score of at least 70 percent, excluding veteran's credit, shall be required for passing.

B. Where an examination consists of two or more parts, the director of personnel may set a minimum score or rank to be required in any part or combination of parts of such

examination, and any applicant who does not attain such minimum score or rank shall not receive a score in the balance of the examination. The minimum score or rank required and the part or parts of the examination to which it is applicable shall be announced at the time of the examination. (Ord. 88-0020 § 1 (part), 1988.)

7.15 *Veteran's credit.* The Charter of the county of Los Angeles provides that in all open competitive examinations, in addition to all other credits, a credit of 10 percent of the total credits specified for such examination shall be given by the civil service commission to all persons passing the examination who have, or who shall have, served in the Armed Forces of the United States in time of war, armed insurrection or international police action and are honorably discharged, or whose service was honorable, and also to the wife of any such person who, while engaged in such service in time of war, armed insurrection or international police action, was wounded, disabled or crippled and thereby permanently prevented from engaging in any remunerative occupation, and also to the widow of any such person who died or was killed while in such service. (Ord. 88-0020 § 1 (part), 1988.)

7.16 *Key-copy inspection.* The director of personnel may order a key-copy inspection period during which time any applicant may inspect a copy of the questions and the key answers and other factors to be considered in scoring the test. The director of personnel must notify all applicants of such order and the dates and place of inspection. During such inspection, applicants shall not be allowed to copy any of the test questions or answers, except to the extent necessary to file a protest. (Ord. 88-0020 § 1 (part), 1988.)

7.17 *Protests against key answers.* During the key-copy inspection period, the applicant may file a protest against any part of the written test, citing the question or questions against which the protest is directed and reasons for pro-

testing. Each protest shall be in writing and on forms provided by the director of personnel, shall give specific facts and reasons to support the protest, and shall include authoritative references or opinions of recognized experts where such exist. Upon receipt of such protests, a review of each protested question shall be made by the director of personnel. Any errors, improprieties or ambiguities disclosed shall be corrected. In case of an ambiguity in a question, the director of personnel may eliminate the question entirely or may allow more than one answer as correct. After the necessary and proper corrections have been made, the answer key, as corrected, shall become the basis for a scoring key upon which all the applicants' papers are finally scored. An applicant who has not filed a protest during the key-copy inspection period shall not be entitled to protest against the written test except on the grounds of specific error in the application of the scoring key. (Ord. 88-0020 § 1 (part), 1988.)

7.18 *Promulgation and notification of test results.* After all the parts of an examination have been completed and scored, an eligible list shall be promulgated, and each applicant shall be notified:

A. When passing, of his/her total score, including veteran's credit and the days during which the applicant may inspect his/her papers; or

B. When failing, of the failure to achieve a passing grade, and the days during which the applicant may inspect his/her papers. (Ord. 88-0020 § 1 (part), 1988.)

7.19 *Inspection of examination materials, rating standards and scoring key.*

A. An applicant shall be allowed a period of 10 business days to inspect the applicant's scored answer sheets, appropriate rating standards, scoring key, records of the applicant's oral interviews or appraisal of promotability, or any records pertaining to his/her score on the examination except that:

1. Copyrighted or standardized tests shall not be subject to review;

2. In those examinations in which a key-copy inspection period was provided, the test materials made available during such key-copy inspection period shall not be subject to review;

3. Validated tests and selection procedures, for which the director of personnel can establish that the burden to the county resulting from applicant's review outweighs the right of the applicant to investigation and discovery shall not be subject to review.

B. During such inspection, the applicant shall not be allowed to copy any of the test questions or answers except to the extent necessary to file a protest or appeal. (Ord. 88-0020 § 1 (part), 1988.)

7.20 *Protests against ratings to the director of personnel.* If the applicant believes an error has been made in the application of the written-test scoring key, or in the rating given him/her on any part of the examination, or that any other error has been made, except such as could have been objected to during the key-copy inspection period, the applicant may, during the final 10-day period referred to in Rule 7.19, make a protest in writing stating specifically where an error has been made; provided, however, that if there has been a key-copy inspection period, no protest may be made against the written questions and key answers

which would have been made during the key-copy inspection period. Each protest shall be in writing and on forms provided by the director of personnel, shall give specific facts and reasons to support the protest, and shall include authoritative references or opinions of recognized experts where such exist. No protest may be made after the 10-day period. Upon receipt of a written protest or request for re-scoring or re-rating, a review of the protest shall be made by the director of personnel, who shall pass on all such protests or requests within 60 days of the date of such protest or request and make any necessary corrections in grades and ratings. If the director of personnel does not render a decision within such time period, the appellant may, at his/her option, deem this a denial and proceed with an appeal to the commission. Any person aggrieved may appeal to the commission for the rulings of the director of personnel pursuant to Rule 4, within 10 business days of the notice of such rulings. Notwithstanding the foregoing, in a situation where a successful appeal will not result in the appellant moving from one group (as defined in Rule 11.01) to a higher group, the appellant will not proceed with the appeal to the civil service commission. (Ord. 88-0020 § 1 (part), 1988: amended by Board Order No. 80 (part), 9/1/87.)

7.21 *Correction of clerical errors.* Any clerical error may be corrected by the director of personnel upon discovery at any time during the life of the eligible list, but no such correction shall affect an appointment made from a certification made prior to the correction. (Ord. 88-0020 § 1 (part), 1988.)

7.22 *Record of examination.* The director of personnel shall preserve for not less than five years the following record of each examination:

A. The report of examination containing the names and scores of all applicants on each part of the examination, and in the total examination;

B. A summary or narrative statement of the examination, showing the method of testing used or the general nature of the examination, the weights of the various parts, and the minimum scores required. (Ord. 88-0020 § 1 (part), 1988.)

7.23 *Record of oral examination.* The director of personnel shall make and preserve for not less than five years a record of oral tests or interviews used in examinations. Such record shall show the basis of rating or standards used and the formula or method used for translating ratings into a numerical score. (Ord. 88-0020 § 1 (part), 1988.)

7.24 *Other records of examination.*

A. The director of personnel shall preserve all other original records prepared or received in connection with any examination for a period of two years after the date of promulgation. Such records may then be destroyed if no longer required for administrative purposes.

B. Any duplicate records of examinations, the originals or permanent photographic reproductions of which are in the files of any officer or department of the county, may be destroyed at any time. (Ord. 88-0020 § 1 (part), 1988.)

7.25 *Examination to be impartial.* All examinations shall be fair and impartial. So far as practicable, written examinations shall be so conducted that the identity of applicants will not be known to the examiners or other persons scoring the answers. No person shall reveal before the completion of an examination any information about such examination except in the official bulletin or by announcement to all applicants equally. (Ord. 88-0020 § 1 (part), 1988.)

Rule 25

MERIT SYSTEM STANDARDS

Rules:

25.01 Employment practices.
25.02 Employment standards.

25.01 *Employment practices.*

A. No person in the classified service or seeking admission thereto shall be appointed, reduced or removed, or in any way favored or discriminated against in employment or opportunity for employment because of race, color, religion, sex, physical handicap, medical condition, marital status, age, national origin or citizenship, ancestry, political opinions or affiliations, organizational membership or affiliation, or other non-merit factors, any of which are not substantially related to successful performance of the duties of the position. "Non-merit factors" are those factors that relate exclusively to a personal or social characteristic or trait and are not substantially related to successful performance of the duties of the position. Any person who appeals alleging discrimination based on a non-merit factor must name the specific non-merit factor(s) on which discrimination is alleged to be based. No hearing shall be granted nor evidence heard relative to discrimination based on unspecified non-merit factors.

B. Nothing in this Rule shall preclude appropriate action by an appointing power when membership in, or affiliation with, an organization may cause a conflict of interest relative to the duties of a position. (Ord. 88-0020 § 1 (part), 1988: amended by Board Order No. 80 (part), 9/1/87.)

25.02 *Employment standards.* No standard for employment shall be applied which will have an adverse effect against members of minority groups as defined in the county's affirmative action policy, women, or the handi-

capped unless it is substantially related to successful performance of the duties of the position. Persons adversely affected by the application of such standards may appeal to the civil service commission under provisions of Rule 4. (Ord. 88-0020 § 1 (part), 1988.)

CIVIL SERVICE COMMISSION
COUNTY OF LOS ANGELES

COMMISSIONERS

N. KEITH ABBOTT
MOISES R. LUNA
GEORGE S. NOJIMA
WADE A. PISTON
TOM SALATA

GENE A. POMEROY
EXECUTIVE OFFICER

EMI YAMASAKI
ASST. EXECUTIVE OFFICER

January 30, 1991

NOTICE OF CIVIL SERVICE COMMISSION DECISION
MEETING OF JANUARY 30, 1991

AGENDA ITEM NO. 9:

REQUEST OF EMILLE V. DECUIR (CASE NO. 90-271) FOR A HEARING ON THE INTERVIEW SCORE RECEIVED IN THE EXAMINATION FOR INVESTIGATOR, D. A.

COMMISSION DECISION:

HEARING DENIED.

Civil Service Rule 4.03B allows only one amended appeal to be filed with the Civil Service Commission.

GENE A. POMEROY
Executive Officer

/s/ EMI YAMASAKI

EMI YAMASAKI
Assistant Executive Officer

lmh

cc: Emille V. DeCuir
Donald C. Randolph
Melinda Fonseca
Appeals Division

ROOM 522 HALL OF ADMINISTRATION
222 NO. GRAND AVENUE
LOS ANGELES, CA 90012
TELEPHONE (213) 974-2411

APPENDIX D

APPENDIX D

NORWALK, CALIFORNIA
THURSDAY, NOVEMBER 30, 1998, 1:50 P.M.
DEPARTMENT SE L
HONORABLE JOHN R. STANTON, JUDGE

MR. KAHN: THANK YOU.

THE COURT: HE'S RECEIVED IT. HE'S AWARE OF THE CONTENTS, BUT HE WAS NOT THE AUTHOR OF THE CONTENTS AND THEREFORE HE IS NOT GOING TO BE BOUND BY THE CONTENTS.

MR. TERAKAWA: YOUR HONOR, THE POINT IS, HE INDICATED THAT IT DID NOT ADDRESS ALL HIS ISSUES, AND I WANT TO IMPEACH HIM ON THAT BASED ON WHAT THE DOCUMENT STATES.

THE COURT: WELL, JUST ASK HIM WHICH ISSUES IT DIDN'T COVER THEN.

MR. KAHN: YOUR HONOR, THIS A COLLATERAL ISSUE, YOUR HONOR, AND IT'S IRRELEVANT TO THIS LAWSUIT. THIS WAS THE RESPONSE TO THE COMMISSION. THIS IS THEIR RESPONSE, THE COUNTY'S RESPONSE, ASKING THE CIVIL SERVICE COMMISSION TO DENY HIM A HEARING.

WHAT POSSIBLE RELEVANCE DOES THIS HAVE IN THIS PROCEEDING WHERE WE ARE ATTEMPTING TO PROVE THAT IN THE GRADING OF HIS COMPLAINT — EXCUSE ME — GRADING OF HIS EXAM THAT HE WAS GIVEN SHORT SHRIFT OR THAT HE THEY ERASED INAPPROPRIATELY?

IT HAS NOTHING TO DO WITH THE ISSUES IN THIS LAWSUIT AND IS ON A COLLATERAL MATTER. AND, YOUR HONOR, WE'RE GOING INTO AN AREA WHERE, I BELIEVE, MY OBJECTIONS EARLIER, I BELIEVE MY — I RENEW MY OBJECTION, ONCE AGAIN, ON THOSE GROUNDS THAT WE ARE GOING DOWN AND AREA WHERE THERE WAS NO DUE PROCESS. THERE WAS NO HEARING. THERE WAS NO EVIDENCE PUT ON BY MR. DECUIR OF HIS CLAIMS AT THAT TIME TO ANY OF THESE PEOPLE, AND THESE SELF-SERVING LETTERS HAVE NO PLACE IN THIS LAWSUIT.

FILED A GOVERNMENT CLAIM AND AFTER YOU SUED THEM IN THIS PROCEEDING?

MR. TERAKAWA; OBJECTIVE — OBJECTION, LEADING AND ARGUMENTATIVE.

THE COURT: OVERRULED.

THE WITNESS: WELL, I DON'T WANT TO INSULT ANYBODY'S INTELLIGENCE, BUT THAT WOULD BE TOTALLY FUTILE. BESIDES THAT, THERE ARE A LOT OF LEGAL ISSUES.

ANYTIME YOU — IF YOU FILE A LEGAL ACTION SUCH AS THIS AND YOU DEPART FROM THAT AND PARTICIPATE IN AN EXAMINATION PROCESS. YOU'VE WAIVED ANY RIGHT TO PURSUE THE FAIRNESS OF THE EXAMINATION FROM WHICH YOU WERE — THE HIRING PRACTICES WERE VIOLATED.

Q. BY MR. KAHN: DID YOU EVER AT ANY CIVIL SERVICE COMMISSION HEARING PRESENT ANY EVIDENCE IN SUPPORT OF YOUR CLAIMS?

WERE YOU ABLE TO DO THAT?

MR. TERAKAWA: OBJECTION, YOUR HONOR, IRRELEVANT.

THE COURT: OVERRULED.

THE WITNESS: NO EVIDENCE WAS EVER TAKEN.

Q. BY MR. KAHN: HAVE YOU EVER HAD THE FUNDAMENTAL DUE PROCESS RIGHT OF PRESENTING EVIDENCE IN SUPPORT OF YOUR CLAIM BEFORE THIS TRIAL?

MR. TERAKAWA: OBJECTION, YOUR HONOR, CALLS FOR A LEGAL CONCLUSION?

THE COURT: SUSTAINED.

Q. BY MR. KAHN: HAVE YOU EVER PRESENTED ANY EVIDENCE IN SUPPORT OF YOUR CLAIM BEFORE THE TRIAL OF THIS MATTER?

A. I HAVE NOT.

NORWALK, CALIFORNIA
THURSDAY, NOVEMBER 30, 1998, 1:50 P.M.
DEPARTMENT SE L
HONORABLE JOHN R. STANTON, JUDGE

APPEARANCES:

THE PLAINTIFF, EMILLE DECUIR; COUNSEL FOR THE PLAINTIFF, LAWRENCE KAHN; COUNSEL FOR THE DEFENDANTS, ALAN TERAKAWA.

(E. HERNANDEZ,
ELECTRONIC RECORDING MONITOR)

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT OUT OF THE PRESENCE AND HEARING OF THE JURY)

THE COURT: OKAY, LET THE RECORD REFLECT THAT THE JURORS ARE ABSENT. COUNSEL FOR THE RESPECTIVE PARTIES ARE PRESENT.

THE SUBJECT IS THE AUDIT FINDINGS, A SPECIAL REVIEW OF THE DISTRICT ATTORNEY'S EXAMINING, HIRING AND PROMOTIONAL PRACTICES. THE SUMMARY READS AS FOLLOWS:

"WE IDENTIFIED APPROXIMATELY FOUR HUNDRED AND SIXTY INAPPROPRIATE APPOINTMENTS THAT WERE MADE FROM JANUARY 1990 THROUGH JULY 1991. THREE HUNDRED AND FIFTY WERE TO STUDENT WORKER, STUDENT PROFESSIONAL WORKER AND LAW CLERK POSITIONS, SIXTY POSITIONS WERE TO DEPUTY DISTRICT ATTORNEY, FORTY WERE TO SUPPORT STAFF

POSITIONS AND TEN WERE TO CLERICAL POSITIONS."

DIRECT EXAMINATION

BY MR. KAHN:

Q. GOOD MORNING, SIR.

A. GOOD MORNING.

Q. PLEASE STATE YOUR PRESENT OCCUPATION.

A. I'M RETIRED.

Q. AND WHERE DO YOU RESIDE?

A. I RESIDE IN ORANGE COUNTY.

Q. AND IN MAY OF 1990, WHAT WAS YOUR OCCUPATION?

A. IN MAY 1990 I WAS THE ASSISTANT CHIEF OF THE BUREAU OF INVESTIGATION AT THE D.A.'S OFFICE.

Q. AND WITH REFERENCE TO YOUR DUTIES AS ASSISTANT CHIEF, DID YOU PARTICIPATE IN THE INTERVIEWING OF CANDIDATES FOR THE POSITION OF DISTRICT ATTORNEY INVESTIGATOR?

A. I DID.

Q. AND AS OF MAY 1990 APPROXIMATELY HOW MANY YEARS HAD YOU PERFORMED THAT DUTY, THAT IS INTERVIEWING POTENTIAL CANDIDATES?

A. IT WOULD BE APPROXIMATELY NINE YEARS.

Q. AND DO YOU HAVE ANY ESTIMATE OF THE NUMBER OF CANDIDATES YOU WOULD HAVE INTERVIEWED OVER THAT PERIOD OF NINE YEARS?

A. IT WOULD BE STRICTLY AN ESTIMATE. IT WOULD BE SOMEWHERE IN THE RANGE OF TWO HUNDRED TO THREE HUNDRED.

Q. AND OF THOSE TWO TO THREE HUNDRED CANDIDATES THAT YOU INTERVIEWED, DID ANY OF THEM MAKE A CLAIM TO THE CIVIL SERVICE COMMISSION REGARDING THE EXAM ITSELF?

A. I KNOW OF TWO BESIDE MR. DECUIR.

Q. OKAY, AND WERE THOSE PRIOR TO 1990?

A. I'M NOT SURE. IT COULD HAVE BEEN RIGHT IN THAT AREA.

Q. OKAY.

A. EITHER A YEAR BEFORE OR A YEAR AFTER.

Q. OKAY, AND DO YOU HAVE ANY RECOLLECTION OF THE NAMES OF THOSE CANDIDATES?

DON'T TELL ME THE NAMES, JUST TELL ME WHETHER YOU HAVE THE RECOLLECTION OF THEM.

A. NO, I DO NOT.

Q. OKAY, SIR, I'D LIKE TO HAVE YOU TAKE A LOOK AT EXHIBIT 21 THAT HAS BEEN PREVIOUSLY IDENTIFIED. AT THE SAME TIME I'M GOING TO HAVE YOU TAKE A LOOK AT EXHIBIT 19, IF I CAN FIND IT. HERE WE GO.

NOW ARE YOU FAMILIAR WITH THE EXAMINATION SUMMARY SHEET THAT IS IN FRONT OF YOU AS EXHIBIT 21?

MR. TERAKAWA: EXCUSE ME, FOR THE COURT'S CONVENIENCE, IT'S 201.

THE COURT: 201, THANK YOU.

Q. BY MR. KAHN: DO YOU RECOGNIZE THIS DOCUMENT AS THE EXAMINATION SUMMARY FOR EXAMINATION 12889(E)?

A. WE'RE TALKING ABOUT EXHIBIT 21?

Q. YES.

UP IN THE LEFT-HAND CORNER THERE'S A DESIGNATION OF THE EXAM.

IT SAYS 12899(E); CORRECT?

A. THAT'S CORRECT.

Q. AND, DO YOU SEE — JUST LOOK UP ON THE BOARD, HERE, IT'S EASIER — THAT MR. DECUIR WAS IN 12889(E)?

THAT WAS THE SAME EXAM HE WAS IN?

A. THAT'S CORRECT.

Q. NOW I'D LIKE YOU TO TAKE A LOOK AT PAGE 3, AND GO DOWN SIX NAMES AND YOU'LL SEE GREGORY T.; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AND WHAT WAS GREGORY T.'S WRITTEN SCORE, ACCORDING TO THIS EXAMINATION SUMMARY?

A. SIXTY-FIVE.

Q. ACCORDING TO THIS EXAMINATION SUMMARY, WHAT WAS HIS INTERVIEW SCORE?

A. NINETY-FIVE.

Q. AND HE RECEIVED A FINAL SCORE OF?

A. NINETY-FIVE.

Q. I'D LIKE TO HAVE YOU NOW — NEXT, I SHOULD SAY, TAKE A LOOK AT — GO BACK ONE PAGE, PAGE 2. I MISSED ONE.

AND DO YOU SEE A JAMES E.?

A. YES, THE FIRST NAME.

Q. AND WHAT WAS HIS WRITTEN SCORE?

A. SIXTY-ONE.

Q. AND HIS INTERVIEW SCORE?

A. NINETY.

Q. WITH HIS FINAL SCORE?

A. NINETY.

Q. OKAY, LET'S GO TO PAGE 5, AND LOOKS LIKE THE FIFTH NAME DOWN, LINDA J.

A. YES.

Q. AND HER WRITTEN SCORE?

A. WAS A SIXTY-EIGHT.

Q. AND HER ORAL SCORE, INTERVIEW SCORE?

A. NINETY-TWO.

Q. FINAL SCORE?

A. NINETY-TWO.

Q. LET'S TAKE A LOOK AT PAGE 8. AND DO YOU SEE CATHERINE L., THE THIRD NAME DOWN?

A. I BELIEVE THAT'S CATHERINE. IT'S NOT A GOOD PRINTOUT.

Q. KIND OF LOOKS LIKE "CATHERINE."

A. YES.

Q. AND WHAT WAS HER WRITTEN SCORE?

A. SIXTY-SEVEN.

Q. AND HER INTERVIEW SCORE?

A. 95.30.

Q. DO YOU KNOW HOW ANYBODY COULD WIND UP WITH A 95.30 IN THIS EXAM?

A. IT WOULD BE A COMPILATION OF THE THREE SCORES DIVIDED BY THREE.

Q. NOW AS FAR AS YOU AS ASSISTANT CHIEF OF THE BUREAU, DURING THE TIME THAT YOU WERE ASSISTANT CHIEF AND CONDUCTING THESE EXAMINATIONS, DID YOU HAVE ANY POLICY OR PRACTICE WITH REGARD TO WHETHER OR NOT A CANDIDATE HAD VETERAN'S CREDIT?

A. EXPLAIN THAT — PARDON ME, DO THAT ONE MORE TIME.

Q. IN TERMS OF HOW YOU SCORED A CANDIDATE ON AN INTERVIEW.

MR. KAHN: OBJECTION, VAGUE AND AMBIGUOUS.

MR. TERAKAWA: I'LL RESTATE IT.

Q. DURING THE TIME THAT YOU WERE THE ASSISTANT CHIEF AND PARTICIPATING IN DISTRICT ATTORNEY INVESTIGATOR EXAMINATIONS, DID THE FACT THAT A PARTICULAR CANDIDATE MIGHT BE CLAIMING VETERAN'S CREDIT HAVE ANY AFFECT ON THE SCORE THAT YOU GAVE HIM DURING AN INTERVIEW?

A. NO.

Q. NOW WITH REGARD TO THE TIME WHEN YOU WERE CONDUCTING THESE INTERVIEWS, DID YOU RESTRICT THE TIME IN WHICH A CANDIDATE COULD ANSWER THE QUESTIONS THAT WERE POSED TO HIM OR HER?

A. I DON'T BELIEVE I DID. IF I DID, I DID IT UNCONSCIOUSLY.

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT SE L
HONORABLE JOHN R. STANTON, JUDGE
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

EMILLE V. DECUIR
Plaintiff,

VS.

COUNTY OF LOS ANGELES, et. al.,
Defendants.

No. BC 052064

I, Debbie Lohmuller, a duly designated transcriber, do hereby declare and certify under penalty of perjury that an augmented appeal transcript has been prepared of the portions of Tapes 1–23 which were duly recorded on November 20, 27–30 and December 1, 1995 in the Superior Court of California, County of Los Angeles, Department SE L, in the above-mentioned case and that the foregoing pages 1 through 819 comprise a true, correct and accurate augmented appeal transcription of the aforementioned tapes.

Dated this 1st day of June, 1997.

/s/ DEBBIE LOHMULLER
Debbie Lohmuller